



March 6, 2012

Jason Smathers
MuckRock News
DEPT MR 1013
P.O. Box 55819
Boston, MA 02205-5819

RE: FOIA Case No. 2012-FPRO-00390

Dear Mr. Smathers:

This responds to your Freedom of Information Act (FOIA) request dated January 14, 2012 in which you seek the following records that relate to the Fair Political Practices Commission FOIA requests about a campaign mailing sent during a 2008 local recall campaign:

All records concerning the processing of the FOIA request mentioned in the news article ["California political watchdog agency sues U.S. Postal Service" authored by Torey Van Oot]. Please include all administrative records created in processing the request, all records created due to appeal, the initial request and all communicate between the USPS and the requester concerning the request.

Thank you for your patience while we processed your FOIA request. By this letter we are giving you the following responsive records released in full: April 28, 2010 FOIA request, July 7, 2010 subpoena, November 23, 2010 appeal, and the Postal Service response letters dated March 15, 2010, May 21, 2010, May 25, 2010, November 2, 2010, and January 10, 2011.

Generally, the FOIA requires government agencies to disclose reasonably described "records" within their possession unless the records fall within one or more of several exemptions. 5 U.S.C. § 552(a)(3), (b)(1)-(9). We have determined that certain information contained in the requested emails and three Postal Service (PS) Forms 3602, Postal Service Statement of Mailing/3607 Weighing and Dispatch Certificate, is exempt from disclosure pursuant to FOIA Exemptions 3, 4, and 5 as discussed below.

Exemption 3 applies to information that is exempt from disclosure under another federal statute. The USPS is "an independent establishment of the executive branch" of the government, created by the Postal Reorganization Act, (PRA), 39 U.S.C. §§ 101, *et seq.*, and directed to conduct its operations in accordance with sound business principles. While it is generally subject to the requirements imposed by the FOIA, 39 U.S.C. § 410(b)(1), subsection (c)(2) of section 410 provides, however, that subsection (b)(1) does not require the disclosure of "information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed." Section 410(c)(2) operates independently and as an exempting statute within the scope of Exemption 3(B) of the FOIA.

We consider the full disclosure of postage statements to be contrary to good business practice; therefore, certain information is considered commercially sensitive, proprietary business information that the Postal Service does not disclose to the public and is protected by the FOIA Exemption 3 and U.S.C. § 410(c)(2).

Additionally, certain information in the postage statements is exempt from disclosure under Exemption 4. Exemption 4 permits agencies to withhold "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." 5 U.S.C. § 552(b)(4). The information is provided to the Postal Service by a party outside the Postal Service, such Information contained on postage statements consists of confidential information provided to the Postal Service by business customers who would customarily not be released to the public by the person from whom it was obtained.

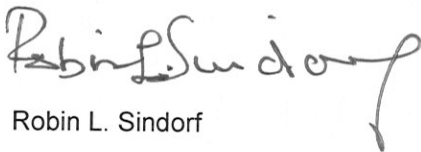
As information, postage statements are not intended to show total circulation numbers. Rather, postage statements are used to compute postage, and they only show the number of pieces or copies at the appropriate rate that are mailed at a post office on a particular date. The information contained on postage statements consists primarily of the number of pieces mailed, the weight of the mail pieces, and the applicable postage.

Many customers object to the release of their postage statements because they do not want their competitors to have access to the information contained on the statements. The information contained in a postage statement, including the number of pieces mailed, the rate of postage applicable to the mailings, and the amount of postage required for the mailings would be considered the business interests of the mailer. Therefore, we conclude that Exemption 4 provides a secondary ground to withhold the requested information.

Exemption 5 permits withholding inter-agency or intra-agency letters or memorandums that would not be available by law to a party other than an agency in litigation with the U.S. Postal Service. The purpose of this exemption is to encourage open, frank discussion on matters of policy between agency personnel; to protect against premature disclosure of proposed policies before they are finally adopted and to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. The emails contain opinions, analysis, advice, and recommendations to be used in the decision making process. Also, withheld under Exemption 5 is information that is prepared by agency attorneys that contain confidential communications encompassing opinions given by an attorney, and communications between attorneys that reflect client-supplied information.

You have the right to appeal this response to your request by writing to the General Counsel, U.S. Postal Service, Washington, DC 20260, within 30 days of the date of this letter. The letter of appeal should include statements concerning this response, and the reasons why it is believed to be erroneous, and the relief sought, along with copies of the original request, this letter, and any other related correspondence

Sincerely,



Robin L. Sindorf

cc: Ms. Chavannes-Battle

Matter Name:	FAIR POLITICAL PRACTICES COMMISSION FOIA REQUEST	LM#: SF201016800	
Matter Type:	Advice		
Date Opened:	3/9/2010	Status: Closed	
Date Closed:	4/14/2010	Stage: N/A	
Description:	California Commission requests (1) a copy of Form 1093 for PO Box 1882 in Manhattan Beach; and (2) information regarding Permit No. 2058, including postage statements. Client requests guidance on what/whether to release.		
Contacts:	Role/Entity Assigned Attorney (Primary) PATEL, PARIN N. - ATTORNEY - PACIFIC AREA LAW OFFICE Client WASHINGTON, DEBORAH K : SUPV BUSINESS MAIL ENTRY - LOS ANGELES, CA		
Calendar of Events:	Date 4/14/2010	Event Disposition - Response Written	Notes Advised the client that, according to AS-353, we can only disclose the name and address of the permit holder and cannot release postage statements.
Facility:	LOS ANGELES - P&D CENTER - 7001 S CENTRAL AVE		
Client Dist.:	PACIFIC AREA - LOS ANGELES PC - LOS ANGELES DISTRICT		
HQ\Area:	PACIFIC AREA		
Office:	LONG BEACH LAW OFFICE		
Categories:	Category Information	Subcat. (Claim Type) FOIA Advice	



**UNITED STATES
POSTAL SERVICE**

March 15, 2010

Fair Political Practices Commission
Attn: Tino Salinas - Investigator
428 J. Stret Suite 620
Sacramento CA 95814-2329

RE: Request Letter for Postal Records

Mr. Salinas:

You have requested the name and address of the business and/or individual(s) assigned to Permit No. 2058, Los Angeles, CA; as well as any and all postage statement information (PS Form 3602-R1) in connection with the sample mail pieces that you provided. According to postal regulations, AS-353 Section 4-4.3, I can only provide the name and address of the permit holder of which you are already aware. The permit holders name and address are as follows:

**Committee Against Measure BB
P.O. Box 1882
Manhattan Beach CA 90267-1882.**


Privacy Act Regulations prevent us from providing postage statement information which includes financial data from the customers permit account. You may appeal this decision by contacting the general counsel at this address below:

GENERAL COUNSEL
US POSTAL SERVICE
475 L'ENFANT PLZ SW RM 6004
WASHINGTON DC 20260

You also requested information regarding Form 1093 for the customers Post Office Box. This request must be made through the Freedom of Information Act. I have attached a form for your convenience. Complete the form and mail to:

**US Postal Service
475 L'Enfant Plaza SW
Washington, DC 20260-1100**

Sincerely,


Debbie K. Washington
Supervisor, Business Mail Entry

Small, Wylene E - Washington, DC

From: Washington, Debbie K - Inglewood, CA
Sent: Friday, February 17, 2012 9:23 PM
To: Small, Wylene E - Washington, DC
Cc: Ashman, Kristi J - Long Beach, CA; Enriquez, Rodger - Los Angeles, CA
Subject: FW: Fair Political Practices Commission
Attachments: Fair Political Practices -FOIA.pdf

This letter is dated March 15, 2010 not April 14, 2010

From: Patel, Parin N - Long Beach, CA
Sent: Tuesday, April 20, 2010 10:37 AM
To: Washington, Debbie K - Inglewood, CA
Subject: FW: Fair Political Practices Commission
Importance: High

Debbie, I got a call from someone at the FPPC regarding their FOIA request. Can you please send me a copy of the letter that you ultimately sent to them regarding their request?

Parin

From: Patel, Parin N - Long Beach, CA
Sent: Thursday, March 11, 2010 5:27 PM
To: Washington, Debbie K - Inglewood, CA
Subject: RE: Fair Political Practices Commission

You are correct that we can only disclose the name and address of the permit holder according to Section 4-4.3.

(b) (5)

They can appeal the denial of their request to Headquarters. When issuing the denial, please advise them of their appeal rights as set forth in Section 4-7 (p. 42 of the Handbook).

Parin Patel
Attorney
Pacific Area Law Department
300 Long Beach Blvd., Room 240
Long Beach, CA 90802-2496
562-628-1340
562-628-1369 (fax)

From: Rowe, Geraldine O - Long Beach, CA
Sent: Tuesday, March 09, 2010 3:32 PM
To: Washington, Debbie K - Inglewood, CA
Cc: Patel, Parin N - Long Beach, CA
Subject: RE: Fair Political Practices Commission

By copy of this email, I am assigning Attorney Parin Patel to review the request from the Commission, and advise you as to what information you may release. Thanks, G

2/21/2012

Geraldine O. Rowe
Deputy Managing Counsel
Pacific Area - Long Beach Law Office
300 Long Beach Blvd., Room 240
Long Beach, CA 90802-2496
562-628-1340
FAX: 562-628-1369

CONFIDENTIAL AND PRIVILEGED
DO NOT DISSEMINATE OR FILE WITHOUT SENDER'S PERMISSION

From: Washington, Debbie K - Inglewood, CA
Sent: Monday, March 08, 2010 7:11 PM
To: Rowe, Geraldine O - Long Beach, CA
Cc: Enriquez, Rodger - Los Angeles, CA; Marney, Steven W - Los Angeles, CA
Subject: Fair Political Practices Commission

Please see attached. Request for Postal Records for Permit #2058. According to AS-353 I am not allowed to provide anything other than the Name and Address of the Permit Holder. (b) (5)

(b) (5)



2/21/2012

(b) (5)



Debbie Washington
Supervisor, Business Mail Entry
7001 South Central Ave. Room 210
Los Angeles CA 90052-9693
Office: (323) 586-3638
Fax: (323) 586-3702

-----Original Message-----

From: Washington, Debbie K - Inglewood, CA
Sent: Monday, March 08, 2010 6:25 PM
To: Washington, Debbie K - Inglewood, CA
Cc: Washington, Debbie K - Inglewood, CA
Subject:

Please open the attached document. This document was sent to you from the United States Postal Service.

2/21/2012



U.S. POSTAL SERVICE

MAY 03 2010

RECEIVED BY
OFFICE OF THE GENERAL COUNSEL

FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

April 28, 2010

General Counsel
United States Postal Service
475 L'Enfant PLZ SW Rm. 6004
Washington DC 20260



Re: FPPC Case No. 08/729
Request Letter for Postal Records

Dear Sir or Madam:

The Fair Political Practices Commission's Enforcement Division is requesting information related to four mailings sent in connection with the November 2008 Manhattan Beach Unified School District elections. The Fair Political Practices Commission (FPPC) is a California state agency.

Our Agency is currently investigating possible violations of the Political Reform Act by Bill Eisen and the following campaign committees, **Committee Against Measure BB (CAMBB)** and the **South Bay Taxpayers Association (SBTA)**. Because our investigations are confidential, we cannot disclose to you any specific information about the investigation. In order to move forward with our investigation however, it is essential that we obtain a copy of Form 1093 for P.O. Box 1882 Manhattan Beach CA. 90267. In addition, we are requesting the name and address of the business and/or individual(s) assigned to Permit No. 2058, Los Angeles CA; as well as any and all postage statement information (PS Form 3602) in connection with the attached mailers.

Government Code Section 83118 provides the FPPC with the power to subpoena any records, or other items material to the performance of the FPPC's duties. However, by voluntarily complying with this request, we can bring closure to this issue to all parties in a timely manner. We would appreciate receiving this information by May 12, 2010.

Our agency has made the same request with the Bulk Mail Entry Supervisor in Los Angeles California; however, we were advised that our request needed to go through your department for approval. Your prompt assistance in this matter is greatly appreciated. If you have any questions, please contact me at (916) 322-8246 or via email at tsalinas@fppc.ca.gov.

Sincerely,

Tino Salinas

Tino Salinas
Investigator
Enforcement Division

Attachments

1. Copy of mailings (2) sent by *Committee Against Measure BB*, entitled *Enough is Enough! Let's Not Pass another Bond Measure Boondoggle*.
2. Copy of mailings (2) entitled *Taxpayer Alert* from *South Bay Taxpayers Association*.

Committee Against Measure BB
P.O. Box 1882
Manhattan Beach, CA 90267

PRST STD
U.S. POSTAGE
PAID
LOS ANGELES, CA
PERMIT NO. 2058

*****AUTO**5-DIGIT 90266
WAYLAND FAMILY
1642 VOORHEES AVE
MANHATTAN BEACH CA 90266-7044



*Enough is Enough! Let's not pass
another bond measure boondoggle.*

Committee Against Measure BB
P.O. Box 1882
Manhattan Beach, CA 90267
Tel. 310 546-2085

Dear friend,

Measure BB is another bond measure boondoggle! Without having done a routine needs assessment our school district is seeking voter approval of a no less than \$67 million bond to be funded entirely by property tax assessments. The proceeds from the bond would be used to demolish and completely replace the **very same** Mira Costa classrooms that were recently renovated and modernized with funds from Measure M adopted by the voters in 2000.

The district seems to be saying, "Trust us. We'll spend the bond money wisely." But can the district be trusted when it wasted much of its Measure M bond money on expensive change orders and plush new offices for administrators leaving insufficient funds for a new library and performing arts building promised for Mira Costa? And the \$67 million sought by the district is just the **down payment** on the more than \$150 million that the new buildings are expected to cost. If Measure BB is adopted yet **another** bond measure will be required to complete the work!

The notion that new buildings are needed to attract and retain good teachers is simply untrue. In fact, many Mira Costa teachers see no need at all for new buildings and are concerned with the disruption that a 5 or 6 year rebuilding program will have on the campus. If the district wishes to attract and retain good teachers it should consider paying them a competitive salary which it could afford if it would just stop wasting millions of dollars on frivolous litigation against parents and on special ed contractors who shortchange the district on the number of hours worked.

Perhaps because of my vocal opposition to government waste and to Measure BB some persons are seeking my recall. But many people agree with me so please join them in voting **NO on RECALL** and **NO on Measure BB**. For more information please see www.BillEisenForSchoolBoard.org and www.NoOnMeasBB.org.

Bill Eisen
Member of the Board of Trustees
Manhattan Beach Unified School District

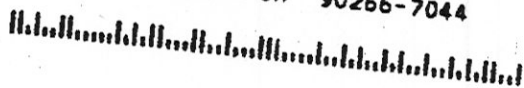
You can help defeat the Measure BB boondoggle by putting up a yard sign. For a yard sign against the measure or against the recall please call 310 546-2085 or leave a message at 310 546-2085 and we would be happy to put the sign up and take it down after the election. You can also help by sending a contribution to the Committee Against Measure BB, P.O. Box 1882, Manhattan Beach, CA 90267.

Measure BB is opposed by the Howard Jarvis Taxpayers Association, the South Bay Taxpayers Association, Residents for Quality City and other Manhattan Beach community groups.

Committee Against Measure BB
P.O. Box 1882
Manhattan Beach, CA 90267

PRST STD
U.S. POSTAGE
PAID
LOS ANGELES, CA
PERMIT NO. 2058

*****AUTO**5-DIGIT 90266
JEFFREY & APRIL WAYLAND
1642 VOORHEES AVE
MANHATTAN BEACH CA 90266-7044



*'s time to say NO to new taxes
d bond measure boondoggles.*

Committee Against Measure BB
P.O. Box 1882
Manhattan Beach, CA 90267
Tel. 310 546-2085

Dear friend,

Let's not pass another bond measure boondoggle.

Many voters are simply *fed up* with the school district's incessant number of school bonds that do little except **raise taxes and waste taxpayer money** on grossly overbuilt and over budget projects. Measure A, passed by the voters in November of 1995, began the repair and modernization of Mira Costa High School. But the work was soon over budget and was never completed. So in November of 2000 Measure M was adopted by the voters expressly "to *complete* the repair and renovation of Mira Costa High School" including a new library and performing arts building. But the work was, again, over budget and the new library and performing arts building were never built.

Now the district insists that the renovation work undertaken under Measure M was never completed and new buildings are needed. However, a licensed general contractor, who took the district's tour of the facilities claimed to be in need of repair, estimates the repairs to cost only about \$20,000 thus hardly justifying a need for new buildings. So it's time to say NO to yet another bond measure boondoggle.

Please vote NO on Measure BB.

School board member Bill Eisen is a taxpayer advocate and vocal opponent of governmental wasteful spending. As a founding member of the South Bay Taxpayers Association he opposed Measure E, a 2002 \$395 million bond measure to rebuild El Camino College when the college's own needs assessment indicated that it needed only \$40 million. Bill opposes Measure BB because our school district hasn't even done a needs assessment for Measure BB.

Bill feels that our teachers are underpaid because of the millions of dollars that the district wastes each year on frivolous litigation and paying many of the district's private special ed contractors for unworked hours. Bill has encouraged the district to retain the non-profit California School Board Association's special ed review team to evaluate the district's special ed program. This team has helped other school districts save millions of dollars while maintaining or improving the quality of their special ed programs. Bill has at all times been a responsible board member as well as a taxpayer and children's advocate who does not deserve to be recalled.

Please vote NO on Recall.

Bill Eisen
Member of the Board of Trustees
Manhattan Beach Unified School District

Measure BB is opposed by the Howard Jarvis Taxpayers Association, the South Bay Taxpayers Association, Residents for a Quality City and other Manhattan Beach community groups.

TAXPAYER ALERT!

VOTE NO ON MEASURE BB

Measure BB is a \$67 million bond measure intended for improvements to Mira Costa High School including the demolition and replacement of its single story classrooms with new two story buildings. However, in 2005 Manhattan Beach voters approved Measure M - a \$26 million school bond to completely renovate and update Mira Costa thus calling into question why the renovated classrooms need to be replaced. Moreover, much of the Measure M bond money was wasted on excessive administrative expenses, unnecessary change orders and an overbuilt administration building.

The bond oversight committee appointed to oversee Measure M expenditures was entirely ineffective and we see no indication that the Measure BB bond oversight committee will be any more effective. Therefore, we urge a **NO** vote on Measure BB.

VOTE NO ON RECALL

Bill Eisen, whose recall is being sought, is the only member of the school board opposed to Measure BB. And he is the only board member who has sought to curtail the school district's wasteful expenditures. Each year the district wastes millions of dollars on attorneys who pursue frivolous lawsuits against parents. And even more money is wasted on hugely excessive and often fraudulent fees billed by private contractors who provide services to the district for its special needs children.

Bill Eisen is the only board member who has objected to these fees and has sought to have the district retain the review team, sponsored by the non-profit California School Boards Association, to review the district's expenditures for special needs children. This team has helped other school districts save millions of dollars while maintaining or improving the quality of their special ed programs. Therefore, we urge a **NO** vote on the recall of board member Bill Eisen.

PLEASE BE SURE TO VOTE ON NOVEMBER 4.



④

SOUTH BAY TAXPAYERS ASSOCIATION
1601 N. SEPULVEDA BLVD., SUITE 154
MANHATTAN BEACH, CA 90266
Tel. (310) 546-2085

TAXPAYER ALERT!



VOTE NO ON MEASURE BB

- Measure BB is a \$67 million bond measure intended for improvements to Mira Costa High School including the demolition and replacement of its single story classrooms with new two story buildings. However, Mira Costa's classrooms and science labs were completely renovated and updated with funds from Measure M, adopted by the voters in November of 2000, and the buildings, except for a small amount of deferred maintenance, are currently in excellent condition and definitely not in need of replacement.
 - Most Mira Costa students prefer the existing single story campus layout which allows students to congregate for lunch or break in the nicely landscaped areas between classroom buildings.
 - The \$67 million which the district is seeking will not be sufficient to complete the projected work. New school buildings are required to meet state standards and currently cost about \$560 per square foot to construct. And this does not include administrative overhead and the cost of temporary classrooms, at upwards of \$100,000 each, while the new buildings are under construction. Bottom line is that replacement of Mira Costa's classrooms will cost upwards of \$150 million - not \$67 million - and will require passage of yet another bond measure to complete the work.
 - The citizen's bond oversight committee appointed to oversee Measure M bond funds failed to prevent district mismanagement of bond money much of which was improperly diverted to the construction of a plush new office building for administrators. We see no evidence that the recently appointed Measure BB oversight committee will be any more effective than the Measure M oversight committee in limiting district mismanagement of bond funds.
- Therefore, we urge a NO vote on Measure BB.**



VOTE NO ON RECALL

School board member Bill Eisen, whose recall is being sought, opposes Measure BB and has sought to curb the millions of dollars that the district wastes each year pursuing such things as frivolous legal actions against parents. Bill Eisen has also sought to curtail the fraudulent fees billed by many of the district's private special ed contractors and to have the district retain the special ed review team sponsored by the non-profit California School Boards Association. This team has helped other school districts save millions of dollars while maintaining or improving the quality of their special ed programs.

Therefore, we urge a NO vote on the Recall of Bill Eisen.



FAIR POLITICAL PRACTICES COMMISSION

428 J STREET, SUITE 620
SACRAMENTO, CALIFORNIA 95814-2329



General Counsel
United States Postal Service
475 L'Enfant PLZ SW Rm. 6004
Washington DC 20260

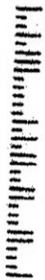


UNITED STATES POSTAGE
02 1A
0004626747
MAILED FROM ZIP CODE 95814
\$00.61
APR 28 2010
PRIVACY DIVISION

U.S. POSTAL SERVICE

APR 30 2010

RECEIVED BY
OFFICE OF THE GENERAL COUNSEL





May 25, 2010

Tino Salinas
Investigator
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814-2329

RE: File No. 2010-GRO-00040

Dear Mr. Salinas:

This responds to your request of April 28, 2010 in which you seek change of address or boxholder information, name and address assigned to a specific Permit number, and postage statement information.

Based on the information provided by you, the agency official having jurisdiction over the subject matter of your request dealing with the change of address or boxholder information is the Postmaster of the Manhattan Beach, California Post Office. I have forwarded your request to that office for action. You will receive a response directly from that office.

In the future, please direct all process server requests for address-related information to the Postmaster of the post office serving the last known address. To assist you with obtaining that information, you may visit our web site at www.usps.com (click on the "Locate a Post Office" link), call our toll-free line at 1-800-ASK-USPS (1-800-275-8777), or contact your local post office.

As I stated to you during our May 19, 200 telephone conversation, Records available to the public regarding permit holder data are the name and address of the holder of a particular bulk mail permit, the permit imprint or similar permit, and the name of any individual applying for a permit on behalf of a holder. Lists of permit holders may not be disclosed. (See Handbook AS-353, 4-5.3). You may obtain this information by contacting the following address:

POSTAGE TECHNOLOGY MANAGEMENT
US POSTAL SERVICE
475 L'ENFANT PLZ SW RM 4200 NB
WASHINGTON DC 20260

Generally, the Freedom of Information Act (FOIA) requires government agencies to disclose reasonably described "records" within their possession unless the records fall within one or more of several exemptions. 5 U.S.C. § 552(a)(3), (b)(1)-(9). We have determined that the records you are requesting regarding postage statement are exempt from disclosure pursuant to FOIA exemptions 3 and 4.

Exemption 3 applies to information that is exempt from disclosure under another federal statute. The USPS is "an independent establishment of the executive branch" of the government, created by the Postal Reorganization Act, (PRA), 39 U.S.C. §§ 101, et seq., and directed to conduct its operations in accordance with sound business principles. While it is generally subject to the requirements imposed by the FOIA, 39 U.S.C. § 410(b)(1), subsection (c)(2) of section 410 provides, however, that subsection (b)(1) does not require the disclosure of "information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed." Section 410(c)(2) operates independently and as an exempting statute within the scope of Exemption 3(B) of the FOIA.

We consider the disclosure of postage statements to be contrary to good business practice; therefore, the information is considered commercially sensitive, proprietary business information that the Postal Service does not disclose to the public and is protected by the FOIA Exemption 3 and U.S.C. § 410(c)(2).

Additionally, the requested information is exempt from disclosure under Exemption 4. Exemption 4 permits agencies to withhold "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." 5 U.S.C. § 552(b)(4). The information is provided to the Postal Service by a party outside the Postal Service, such Information contained on postage statements consists of confidential information provided to the Postal Service by business customers who would customarily not be released to the public by the person from whom it was obtained.

As information, postage statements are not intended to show total circulation numbers. Rather, postage statements are used to compute postage, and they only show the number of pieces or copies at the appropriate rate that are mailed at a post office on a particular date. The information contained on postage statements consists primarily of the number of pieces mailed, the weight of the mail pieces, and the applicable postage.

Many customers object to the release of their postage statements because they do not want their competitors to have access to the information contained on the statements. The information contained in a postage statement, including the number of pieces mailed, the rate of postage applicable to the mailings, and the amount of postage required for the mailings would be considered the business interests of the mailer. Therefore, we conclude that Exemption 4 provides a secondary ground to withhold the requested information.

You have the right to appeal this response to your request by writing to the General Counsel, U.S. Postal Service, Washington, DC 20260, within 30 days of the date of this letter. The letter of appeal should include statements concerning this response, and the reasons why it is believed to be erroneous, and the relief sought, along with copies of the original request, this letter, and any other related correspondence

Sincerely,

Nancy P. Chavannes-Battle
Consumer Research Analyst



May 21, 2010

POSTMASTER
USPS
425 15TH ST STE C
MANHATTAN BEACH, CA 90266-9993

SUBJECT: File No. 2010-GRO-00040

The attached request for address information is forwarded to your office for handling and direct response.

If you have any questions regarding the attached, please contact me at 202-268-2030 for assistance.

Nancy P. Chavannes-Battle
Consumer Research Analyst

Attachment



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July 7, 2010

20 JUL 2010 11:49

General Counsel
United States Postal Service
475 L'Enfant PLZ SW Rm. 6004
Washington DC 20260

U.S. POSTAL SERVICE

JUL 19 2010

**RECEIVED BY
OFFICE OF THE GENERAL COUNSEL**

**Re: FPPC Case No. 08/729
Request Letter for Postal Records**

Dear Sir or Madam:

The Fair Political Practices Commission's Enforcement Division is requesting information related to three mailings sent in connection with the November 2008 Manhattan Beach Unified School District elections.

The Fair Political Practices Commission (FPPC) is a California state agency; Government Code Section 83118 provides the FPPC with the power to subpoena any records, or other items material to the performance of the FPPC's duties. It is our understanding that the requested information can not be released to person(s) without such authority. Therefore, I've attached the following documents.

Your prompt assistance in this matter is greatly appreciated. If you have any questions, please contact me at (916) 322-8246 or via email at tsalinas@fppc.ca.gov.

Sincerely,

Tino Salinas
Investigator
Enforcement Division

1 Gary S. Winuk
2 Zachary Norton
3 Fair Political Practices Commission
4 428 J Street, Suite 620
5 Sacramento, California 95814
6 Telephone: (916) 322-5660

7 Attorneys for Complainant

8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10
11 STATE OF CALIFORNIA
12

13 In re the Matter of

FPPC Subpoena Number 08/729-01

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FAIR POLITICAL PRACTICES
COMMISSION
CASE NUMBER 08/729

DECLARATION IN SUPPORT OF
INVESTIGATIVE SUBPOENA
(DUCES TECUM)

I, Tino Salinas, declare as follows:

1. I am a Special Investigator employed by the Fair Political Practices Commission of the State of California.

2. The Fair Political Practices Commission is empowered by section 83115 of the Government Code to investigate possible violations of the Political Reform Act, contained in sections 81000 through 91014 of the Government Code.

3. Consistent with my duties as a Special Investigator, I am investigating a possible violation of section 82041.5 of the Government Code involving sender identification requirements for a mass mailing.

4. The witness specified in the attached Investigative Subpoena (Duces Tecum) has possession or control of documents or records pertaining to Permit No. 2058, Los Angeles, CA, which according to your records is assigned to Committee Against Measure BB, P.O. Box 1882, Manhattan Beach, CA (as it appears on the attached mailpieces). It is our belief that one or both

1 mailpieces were delivered via USPS on or about October 9th, 10th, and 22nd 2008. We are
2 requesting the following information:

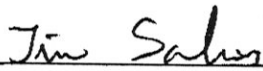
3 a) On the above referenced dates, how many pieces were delivered?

4 5. Said documents are material to my investigation, in that they will enable us to determine
5 the actual amount of mailers that were produced and distributed.

6 6. I have made reasonable efforts to obtain the documents from the witness on a voluntary
7 basis, but I have not been able to do so.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct.

10
11 Date: 7/7/10

12 
13 _____
14 Tino Salinas
15 Special Investigator
16
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Committee Against Measure BB
P.O. Box 1882
Manhattan Beach, CA 90267

PRST STD
U.S. POSTAGE
PAID
LOS ANGELES, CA
PERMIT NO. 2058

*****AUTO**5-DIGIT 90266
ELLEN & WARREN CHAO
1731 WALNUT AVE
MANHATTAN BEACH CA 90266-5016



*Enough is Enough! Let's not pass
another bond measure boondoggle.*

Gary S. Winuk Zak Norton Fair Political Practices Commission 428 J Street, Suite 620 Sacramento, CA 95814 Telephone No.: (916) 322-5660 FAX (916) 322-1932 Attorneys for Complainant	
In the Matter of Fair Political Practices Commission Case Number 08/729-01	
INVESTIGATIVE SUBPOENA (DUCES TECUM) For Personal Appearance and Production of Documents and Things AND DECLARATION	Subpoena Number 08/729-01

THE PEOPLE OF THE STATE OF CALIFORNIA, TO

General Counsel
 United States Postal Service
 475 L'Enfant PLZ SW Rm. 6004
 Washington DC 20260

1. YOU ARE (item a or b must be checked):

- a. ☐ Ordered to appear in person and to produce the records described in the attached declaration. The personal attendance of the custodian or other qualified witness, and the production of the original records are required by this subpoena.
- b. ☒ Not required to appear in person if, 5 days prior to the date shown in item 1, you produce (i) a true, legible, and durable copy of the records described in the attached declaration, and (ii) a completed declaration of custodian of records. (1) Place a copy of the records in an envelope. Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope, or clearly write on the envelope the case number, the subpoena number, the witness name, and the date of the subpoena. (3) Place this first envelope in an outer envelope, seal it, and mail it to >, at the Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. *If you have been served with this subpoena as a custodian of financial records under Government Code sections 7470 and 7474, the records are to be produced not later than 5 days prior to the date and time shown in item 1, unless you receive notice that the customer has moved to quash the subpoena, but not sooner than 10 days after the date that the customer was served with a copy of the subpoena.*

2. IF YOU HAVE ANY QUESTIONS ABOUT THIS SUBPOENA, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Tino Salinas

Telephone number: (916) 322-8246

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY A COURT.

Date issued: 7/7/10


 Roman G. Porter
 Executive Director, Fair Political Practices Commission

(Declaration in support of subpoena attached)

1 GARY S. WINUK
Chief of Enforcement
2 Zak Norton
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In re the Matter of

FPPC Subpoena Number 08/729-01

12 **FAIR POLITICAL PRACTICES**
13 **COMMISSION CASE NUMBER 08/729**
14

**DECLARATION OF CUSTODIAN OF
RECORDS**

15 I, (name of custodian of records) _____, declare as follows:

- 16 1. I am a duly authorized custodian of records for USPS, and I have authority to certify its
17 records.
- 18 2. In response to Subpoena 08/729-01, I have diligently searched the records maintained by
19 USPS, and:
- 20 a. ☐ I have provided a true copy of all of the records described in the subpoena.
- 21 b. ☐ I have provided a true copy of all of the records described in the subpoena, except
22 for the following document(s), which have not been produced for the reasons stated
23 herein:

Record(s)	Reason(s) Not Produced

1
2 c. ☐ USPS does not have within its possession or control any of the records described in
3 the subpoena.

4 3. Any and all records produced pursuant to the subpoena were prepared by the personnel of
5 USPS in the ordinary course of business, at or near the time of the act, condition, or event, to which the
6 records pertain.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct and that this declaration was executed in (city) _____,
9 (state) _____, on (date) _____, 2010.

10
11
12 _____
13 (Printed Name of Custodian of Records)

14 _____
15 (Signature of Custodian of Records)



FAIR POLITICAL PRACTICES COMMISSION

428 J STREET, SUITE 620
SACRAMENTO, CALIFORNIA 95814-2329



02 1M
0004291511
JUL 12 2010
\$ 01.05
MAILED FROM ZIP CODE 9581



General Counsel
United States Postal Service
475 L'ENFANT PLZ SW RM 6004
WASHINGTON DC 20260

U.S. POSTAL SERVICE

JUL 19 2010

RECEIVED BY
OFFICE OF THE GENERAL COUNSEL

Committee Against Measure BB
P.O. Box 1882
Manhattan Beach, CA 90267
Tel. 310 546-2085

Committee Against
Measure BB mailing
uses Bill Eisen's
personal address
and phone #.
Bulk permit used.
* Received 10/7/08 *

Dear friend,

Measure BB is another bond measure boondoggle! Without having done a routine needs assessment our school district is seeking voter approval of a no less than **\$67 million** bond to be funded entirely by property tax assessments. The proceeds from the bond would be used to demolish and completely replace the **very same** Mira Costa classrooms that were recently renovated and modernized with funds from Measure M adopted by the voters in 2000.

The district seems to be saying, "Trust us. We'll spend the bond money wisely." But can the district be trusted when it **wasted** much of its Measure M bond money on expensive change orders and plush new offices for administrators leaving insufficient funds for a new library and performing arts building promised for Mira Costa? And the \$67 million sought by the district is just the **down payment** on the more than \$150 million that the new buildings are expected to cost. If Measure BB is adopted yet **another** bond measure will be required to complete the work!

The notion that new buildings are needed to attract and retain good teachers is simply untrue. In fact, many Mira Costa teachers see no need at all for new buildings and are concerned with the disruption that a 5 or 6 year rebuilding program will have on the campus. If the district wishes to attract and retain good teachers it should consider paying them a competitive salary which it could afford if it would just stop wasting millions of dollars on frivolous litigation against parents and on special ed contractors who shortchange the district on the number of hours worked.

Perhaps because of my vocal opposition to government waste and to Measure BB some persons are seeking my recall. But many people agree with me so please join them in voting **NO on RECALL** and **NO on Measure BB**. For more information please see www.BillEisenForSchoolBoard.org and www.NoOnMeasBB.org.

You can help defeat the Measure BB boondoggle by putting up a yard sign. For a yard sign against the measure or against the recall please call 310 546-2085 or leave a message at 310 546-4965 and we would be happy to put the sign up and take it down after the election. You can also help by sending a contribution to the Committee Against Measure BB, P.O. Box 1882, Manhattan Beach, CA 90267.

Bill Eisen
Member of the Board of Trustees
Manhattan Beach Unified School District

Measure BB is opposed by the Howard Jarvis Taxpayers Association, the South Bay Taxpayers Association, Residents for a Quality City and other Manhattan Beach community groups.



RECEIVED
FAIR POLITICAL
PRACTICES COMMISSION

November 2, 2010

10 NOV -5 AM 11:19

Certified Mail # 7009 2250 0004 3690 2517

Tino Salinas
Investigator
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re Your Request for Information

Dear Mr. Salinas:

Enclosed please find three pages of redacted records, which reflect mailings accepted by the Postal Service's Business Mail Entry Unit from the Committee BB. The redactions to these documents are made pursuant to Exemptions 3 and 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(3) in conjunction with 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4).

These records are being provided to you in response to your letter dated July 7, 2010, in which you requested the number of pieces delivered for Permit No. 2058 on October 9, October 10, and October 22, 2008. Please note that the United States Postal Service does not generally track deliveries of mail of this nature, but does track the amount of mail that it receives. Based on the dates that you provided, the attached documents most likely reflect the information that you requested.

If you disagree with this response, in whole or in part, you may appeal it in writing to:

Chief Counsel, Customer Programs
U.S. Postal Service
475 L'Enfant Plaza SW, Room 6004
Washington, DC 20260

Your appeal must be mailed within 30 days of this letter, and must include (1) a copy of your original request, this letter, and any related correspondence; (2) a statement of the action, or failure to act, from which the appeal is taken; (3) a statement of the reasons why you believe the actions or failure to act was erroneous; and (4) a statement of the relief sought.

Respectfully,

Rodger Enriquez
Record Custodian

Encl.



Feedback : Personal Profile | Logout |

Restricted Information

Account Search (Customer Assistance) > Customer Assistance > Transaction Search
 (Reverse) > Transaction Search Results (Reverse) > Receipt

Today's Date: 08/18/2010

Mailing Group Summary Information

Mailing Group ID:

Preparer:

Description:

Mailer's Job #:

Finance No:

Open Date:

Close Date:

Final			
3602		POSTAL SERVICE STATEMENT OF MAILING/3607 WEIGHING AND DISPATCH CERTIFICATE	
TRANS # 200829000281331M1 CAPS TRANS NO: N/A			
Postage Statement: 60581408	Mailer's Job#:		
COMMITTEE AGAINST MEAS B B PO BOX 1882 MANHATTAN BEACH CA 90267-1882			FINANCE NUMBER:
STATION OR UNIT:	LOS ANGELES BULK MAIL ACCEPT. (52)		PERMIT NO: 2058
DATE OF MAILING	CLASS	PROG CAT	TYPE
WEIGHT OF SINGLE PIECE (LBS)	TOTAL PIECES	TOTAL POUNDS	Customer Reference ID NB CAPS Acct No:
MAILED BY: PERMIT NO: NAME:	Political Campaign Mailing Statement Sequence No: 22287		
CONTAINERS	FULL SERVICE N/A	AMOUNT FROM TRUST:	
EEL/PFC:			
VERIFICATION SUMMARY:			
No verification performed.			
SIGNATURE OF WEAVER	HMT DATA PROCESSED BY	RECEIVED FOR PROCESSING BY	
COMMENTS		BEGINNING BALANCE: ENDING BALANCE:	

mailing has been inspected concerning:
 (1) eligibility for postage prices claimed;
 (2) proper preparation (and presort where required);
 (3) proper completion of postage statement; and
 (4) payment of annual fee (if required).


[Feedback](#) | [Personal Profile](#) | [Logout](#)

Resourced Information

Account Search (Customer Assistance) > Customer Assistance > Transaction Search
 (Reversals) > Transaction Search Results (Reversals) > Receipt

Today's Date: 08/18/2010

Mailing Group Summary Information

Mailing Group ID:

Mailing Job #:

Open Date:

Preparer:

Finance No:

Close Date:

Description:

Final			
3602	POSTAL SERVICE STATEMENT OF MAILING/3697 WEIGHING AND DISPATCH CERTIFICATE		TRANS # 200827523240217M1 CAPS TRANS NO: N/A
Postage Statement: 60025689	Mailer's Job#:		
COMMITTEE AGAINST MEAS B B PO BOX 1882 MANHATTAN BEACH CA 90267-1882			FINANCE NUMBER: [REDACTED]
STATION OR UNIT:	LOS ANGELES BULK MAIL ACCEPT. (52)		PERMIT NO: 2058
DATE OF MAILING	CLASS	PROC CAT	TYPE
WEIGHT OF SINGLE PIECE (LBS)	TOTAL PIECES	TOTAL BOUNDS	Customer Reference ID
MAILED BY: PERMIT NO: NAME:	Political Campaign Mailing		CAPS Acct No:
CONTAINERS	FULL SERVICE N/A	AMOUNT FROM TRUST: [REDACTED]	
EEL/PPC:			
VERIFICATION SUMMARY: No verification performed.			
SIGNATURE OF WEIGHER	WT DATA PROCESSED BY	RECEIVED FOR PROCESSING BY	
COMMENTS:		BEGINNING BALANCE: ENDING BALANCE:	
mailing has been inspected concerning: (1) eligibility for postage prices claimed; (2) proper preparation (and presort where required); (3) proper completion of postage statement; and (4) payment of annual fee (if required).			


[Feedback](#) | [Personal Profile](#) | [Logout](#)

Restricted Information

Account Search (Customer Assistance) > Customer Assistance > Transaction Search
 (Reverse) > Transaction Search Results (Reverse) > Receipt

Today's Date: 08/18/2010

Mailing Group Summary Information

Mailing Group ID:

Preparer:

Description:

Mailer's Job #:

Finance No:

Open Date:

Close Date:

Final			
3602	POSTAL SERVICE STATEMENT OF MAILING/3607 WEIGHING AND DISPATCH CERTIFICATE		TRANS # 200829521263869M1 CAPS TRANS NO: N/A
Postage Statement 60819064	Mailer's Job#:		
COMMITTEE AGAINST MEAS B B PO BOX 1882 MANHATTAN BEACH CA 90267-1882			FINANCE NUMBER:
STATION OR UNIT:	LOS ANGELES BULK MAIL ACCEPT. (52)		PERMIT NO: 2058
DATE OF MAILING	CLASS	PROC CAT	TYPE
WEIGHT OF SINGLE PIECE (LBS)	TOTAL PIECES	TOTAL POUNDS	Customer Reference ID 40650 CAPS Acct No:
MAILED BY: PERMIT NO: NAME:	Political Campaign Mailing Statement Sequence No: 22362		
CONTAINERS	FULL SERVICE N/A	AMOUNT FROM TRUST:	
EEL/FPC:			
VERIFICATION SUMMARY: No verification performed.			
SIGNATURE OF WEAHER	JL DATA PROCESSED BY	RECEIVED FOR PROCESSING BY	
COMMENTS:		BEGINNING BALANCE: ENDING BALANCE:	

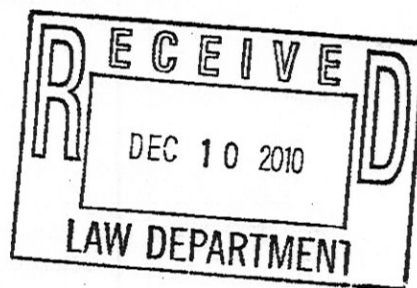
mailing has been inspected concerning:
 (1) eligibility for postage prices claimed;
 (2) proper preparation (and present where required);
 (3) proper completion of postage statement; and
 (4) payment of annual fee (if required).



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

November 23, 2010



Chief Counsel, Customer Programs
U.S. Postal Service
475 L'Enfant Plaza SW, Room 6004
Washington, D.C. 20260

RE: California Fair Political Practices Commission Information Request

Dear Chief Counsel:

On July 7, 2010, my office requested information in connection with an investigation into a possible mass mailing sender identification violation under the California Political Reform Act. Specifically, we sought information including the number of pieces of mail sent out through a bulk permit account.

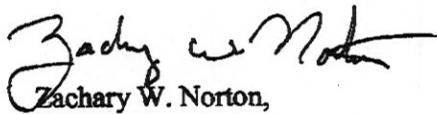
I received copies of statements of mailing, with most of the information on these documents redacted. The Freedom of Information Act ("FOIA") provides the public with access to Postal Service records, unless the records are covered by an exemption. Exemptions 3 and 4 of the FOIA are cited as the reason for making these redactions. However, Exemption 3 covers information that is exempt from disclosure under another federal statute, and Exemption 4 covers trade secrets and privileged or confidential commercial or financial information.

Specifically, I am requesting information pertaining to the mailings bearing Permit No. 2058, Los Angeles, CA on or about October 9th, 10th, and 22nd of 2008, as stated in our July 7, 2010 request. The number of pieces mailed, mailing costs, and date mailed would not constitute trade secrets or other commercial or financial information. We are not requesting any bank account or other financial information, and the permit holder was a public office holder, who was recalled from office in 2008. These mailings were not sent out by a business entity or other commercial enterprise; they were mailed in connection with an election campaign that is now over. As such, I do not believe that the cited exemptions are applicable to the specific information requested in this case.

Thank you for your consideration in this matter. Please feel free to contact me directly with any questions at (916) 322-3956.

Letter to Chief Counsel
November 23, 2010
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary W. Norton". The signature is fluid and cursive, with the first name "Zachary" being more prominent and the last name "Norton" following in a similar style.

Zachary W. Norton,
Staff Counsel
Enforcement Division


[Feedback](#) | [Personal Profile](#) | [Logout](#)

Restricted Information

Account Search (Customer Assistance) > Customer Assistance > Transaction Search
 (Reversals) > Transaction Search Results (Reversals) > Receipt

Today's Date: 08/18/2010

Mailing Group Summary Information

Mailing Group ID:

Mailer's Job #:

Open Date:

Preparer:

Finance No:

Close Date:

Description:

Final

3602	POSTAL SERVICE STATEMENT OF MAILING/3607 WEIGHING AND DISPATCH CERTIFICATE		TRANS # 200827623240217M1 CAPS TRANS NO: N/A
Postage Statement: 60025589	Mailer's Job#:		
COMMITTEE AGAINST MEAS B B PO BOX 1882 MANHATTAN BEACH CA 90267-1882			FINANCE NUMBER:
STATION OR UNIT:	LOS ANGELES BULK MAIL ACCEPT. (52)		PERMIT NO: 2058
DATE OF MAILING	CLASS	PROC CAT	TYPE
WEIGHT OF SINGLE PIECE (LBS)	TOTAL PIECES	TOTAL POUNDS	Customer Reference ID
MAILED BY: PERMIT NO: NAME:	Political Campaign Mailing		CAPS Acct No:
CONTAINERS	FULL SERVICE N/A	AMOUNT FROM TRUST:	
EEL/PFC:			
VERIFICATION SUMMARY: No verification performed.			
SIGNATURE OF weigher	WT DATA PROCESSED BY	RECEIVED FOR PROCESSING BY	
COMMENTS:		BEGINNING BALANCE: ENDING BALANCE:	

mailing has been inspected concerning:
 (1) eligibility for postage price claimed;
 (2) proper preparation (and presort where required);
 (3) proper completion of postage statement; and
 (4) payment of annual fee (if required).


[Feedback](#) | [Personal Profile](#) | [Logout](#)

Restricted Information

Account Search (Customer Assistance) > Customer Assistance > Transaction Search
 (Reversals) > Transaction Search Results (Reversals) > Receipt

Today's Date: 08/18/2010

Mailing Group Summary Information

Mailing Group ID:

Preparer:

Description:

Mailer's Job #:

Finance No:

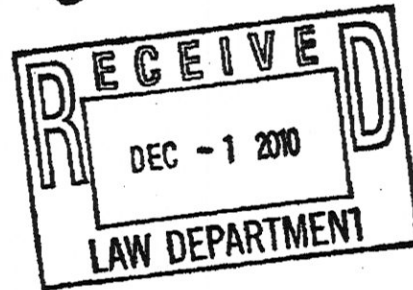
Open Date:

Close Date:

Final			
3602	POSTAL SERVICE STATEMENT OF MAILING/3607 WEIGHING AND DISPATCH CERTIFICATE		TRANS # 200829521283869M1 CAPS TRANS NO: N/A
Postage Statement: 60619064	Mailer's Job#:		
COMMITTEE AGAINST MEAS B B PO BOX 1882 MANHATTAN BEACH CA 90267-1882			FINANCE NUMBER:
STATION OR UNIT:	LOS ANGELES BULK MAIL ACCEPT. (52)		PERMIT NO: 2058
DATE OF MAILING	CLASS	PROC CAT	TYPE
WEIGHT OF SINGLE PIECE (LBS)	TOTAL PIECES	TOTAL POUNDS	Customer Reference ID 40650 CAPS Acct No:
MAILED BY: PERMIT NO. NAME:	Political Campaign Mailing Statement Sequence No: 22352		
CONTAINER	FULL SERVICE N/A	AMOUNT FROM TRUST:	
EEL/PFC:			
VERIFICATION SUMMARY:			
No verification performed.			
SIGNATURE OF WEAHER	JL DATA PROCESSED BY	RECEIVED FOR PROCESSING BY	
COMMENTS:		BEGINNING BALANCE: ENDING BALANCE:	

mailing has been inspected concerning:
 (1) eligibility for postage prices claimed;
 (2) proper preparation (and presort where required);
 (3) proper completion of postage statement; and
 (4) payment of annual fee (if required).

1 Gary S. Winuk
2 Zachary Norton
3 Fair Political Practices Commission
4 428 J Street, Suite 620
5 Sacramento, California 95814
6 Telephone: (916) 322-5660



5 Attorneys for Complainant

6 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

7 STATE OF CALIFORNIA

9 In re the Matter of

FPPC Subpoena Number 08/729-01

11 FAIR POLITICAL PRACTICES
12 COMMISSION
13 CASE NUMBER 08/729

DECLARATION IN SUPPORT OF
INVESTIGATIVE SUBPOENA
(DUCES TECUM)

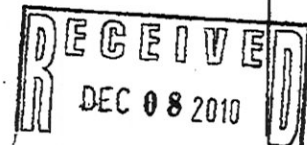
15 I, Tino Salinas, declare as follows:

16 1. I am a Special Investigator employed by the Fair Political Practices Commission of the
17 State of California.

18 2. The Fair Political Practices Commission is empowered by section 83115 of the
19 Government Code to investigate possible violations of the Political Reform Act, contained in
20 sections 81000 through 91014 of the Government Code.

21 3. Consistent with my duties as a Special Investigator, I am investigating a possible
22 violation of section 82041.5 of the Government Code involving sender identification
23 requirements for a mass mailing.

24 4. The witness specified in the attached Investigative Subpoena (Duces Tecum) has
25 possession or control of documents or records pertaining to [REDACTED]
26 [REDACTED] and [REDACTED] to Committee Against Measure 5B, P.O. Box 1882,
27 Mendocino Beach, CA (as it appears on the attached mailpieces). It is our belief that one or both
28



1 mailpieces were delivered via USPS on or about October 9th, 10th, and 22nd 2008. We are
2 requesting the following information:

3 a) ~~On the above referenced dates, how many pieces were delivered?~~

4 5. Said documents are material to my investigation, in that they will enable us to determine
5 the actual amount of mailers that were produced and distributed.

6 6. I have made reasonable efforts to obtain the documents from the witness on a voluntary
7 basis, but I have not been able to do so.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct.

10
11 Date: 7/7/10

12 Tino Salinas
13 Tino Salinas
14 Special Investigator
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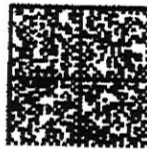


FAIR POLITICAL PRACTICES COMMISSION

428 J STREET, SUITE 620
SACRAMENTO, CALIFORNIA 95814-2329



Chief Counsel, Customer Programs
U.S. Postal Service
475 L'Enfant Plaza SW, Room 6004
Washington, D.C. 20260



UNITED STATES POSTAGE
02 1M
0004282875
MAILED FROM ZIP CODE 95814
\$00.780
NOV 23 2010
PINKY DOWNS

1 GARY S. WINUK
2 Chief of Enforcement
3 Zak Norton
4 Commission Counsel
5 **FAIR POLITICAL PRACTICES COMMISSION**
6 428 J Street, Suite 620
7 Sacramento, CA 95814
8 Telephone: (916) 322-5660

9 Attorneys for Complainant

10
11 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
12 **STATE OF CALIFORNIA**

13 In re the Matter of

FPPC Subpoena Number 08/729-01

14
15 **FAIR POLITICAL PRACTICES**
16 **COMMISSION CASE NUMBER 08/729**

DECLARATION OF CUSTODIAN OF
RECORDS

17 I, (name of custodian of records) _____, declare as follows:

18 1. I am a duly authorized custodian of records for USPS, and I have authority to certify its
19 records.

20 2. In response to Subpoena 08/729-01, I have diligently searched the records maintained by
21 USPS, and:

- 22 a. ☐ I have provided a true copy of all of the records described in the subpoena.
23 b. ☐ I have provided a true copy of all of the records described in the subpoena, except
24 for the following document(s), which have not been produced for the reasons stated
25 herein:

Record(s)	Reason(s) Not Produced

1
2 c. ☐ USPS does not have within its possession or control any of the records described in
3 the subpoena.

4 3. Any and all records produced pursuant to the subpoena were prepared by the personnel of
5 USPS in the ordinary course of business, at or near the time of the act, condition, or event, to which the
6 records pertain.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct and that this declaration was executed in (city) _____,
9 (state) _____, on (date) _____, 2010.

10
11
12 _____
13 (Printed Name of Custodian of Records)

14
15
16 _____
17 (Signature of Custodian of Records)

Committee Against Measure BB
P.O. Box 1882
Manhattan Beach, CA 90267

PRST STD
U.S. POSTAGE
PAID
LOS ANGELES, CA
PERMIT NO. 2058

*****AUTO**5-DIGIT 90266
ELLEN & WARREN CHAO
1731 WALNUT AVE
MANHATTAN BEACH CA 90266-5016



*Enough is Enough! Let's not pass
another bond measure boondoggle.*

Gary S. Winuk Zak Norton Fair Political Practices Commission 428 J Street, Suite 620 Sacramento, CA 95814 Telephone No.: (916) 322-5660 FAX (916) 322-1932 Attorneys for Complainant		
In the Matter of Fair Political Practices Commission Case Number 08/729-01 INVESTIGATIVE SUBPOENA (DUCES TECUM) For Personal Appearance and Production of Documents and Things AND DECLARATION		Subpoena Number 08/729-01

THE PEOPLE OF THE STATE OF CALIFORNIA, TO

General Counsel
 United States Postal Service
 475 L'Enfant PLZ. SW Rm. 6004
 Washington DC 20260

1. YOU ARE (item a or b must be checked):

- a. ☐ Ordered to appear in person and to produce the records described in the attached declaration. The personal attendance of the custodian or other qualified witness, and the production of the original records are required by this subpoena.
- b. ☒ Not required to appear in person if, 5 days prior to the date shown in item 1, you produce (i) a true, legible, and durable copy of the records described in the attached declaration, and (ii) a completed declaration of custodian of records. (1) Place a copy of the records in an envelope. Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope, or clearly write on the envelope the case number, the subpoena number, the witness name, and the date of the subpoena. (3) Place this first envelope in an outer envelope, seal it, and mail it to >, at the Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. If you have been served with this subpoena as a custodian of financial records under Government Code sections 7470 and 7474, the records are to be produced not later than 5 days prior to the date and time shown in item 1, unless you receive notice that the customer has moved to quash the subpoena, but not sooner than 10 days after the date that the customer was served with a copy of the subpoena.

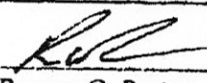
2. IF YOU HAVE ANY QUESTIONS ABOUT THIS SUBPOENA, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Tino Salinas

Telephone number: (916) 322-8246

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY A COURT.

Date issued: 7/7/10


 Roman G. Porter
 Executive Director, Fair Political Practices Commission

(Declaration in support of subpoena attached)



VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 10, 2011

Mr. Zachary W. Norton, Esq.
Staff Counsel, Enforcement Division
Fair Political Practices Commission, State of California
428 J Street, Suite 620
Sacramento, CA 95814-2329

Re: Freedom of Information Act Appeal 11-019

Dear Mr. Norton:

This responds to your letter dated November 23, 2010, which was received in our office on December 10, 2010, in which you appeal the response to your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

I. Background

By correspondence dated July 7, 2010, you requested a copy of records that shows how many pieces were delivered for Permit Number 2058 "on or about October 9th, 10th, and 22nd 2008." By letter dated November 2, 2010, Mailing Requirements provided you a copy of two PS Forms 3602 for Permit Number 2058 that were redacted pursuant to FOIA Exemptions 3, in conjunction with 39 U.S.C. § 410(c)(2), and 4. Also, that office advised that the Postal Service "does not generally track deliveries of mail of this nature, but does track the amount of mail that it receives." By letter dated November 23, 2010, you appealed the redactions for (1) the number of pieces mailed, (2) mailing costs, and (3) the mailing dates. You stated that the exemptions are inapplicable because the "mailings were not sent out by a business entity or other commercial enterprise" and "they were mailed in connection with an election campaign that is now over."

After review, we are upholding the initial decision for the reasons set forth below.

II. Analysis

The FOIA generally requires government agencies to disclose records within their possession. However, the FOIA contains several exemptions that permit agencies to withhold certain records. See 5 U.S.C. § 552(b)(1)-(9).

The commercial information contained on PS Form 3602, Postal Service Statement of Mailing/3607 Weighing and Dispatch Certificate, was properly withheld pursuant to Exemption 3, in conjunction with 39 U.S.C. § 410(c)(2), and Exemption 4, on the grounds that such information is proprietary in nature and it would not be good business practice to disclose it. For instance, PS Form 3602 contains proprietary information

such as the total number of pieces mailed, the "processing category" or type of mail piece utilized for communication (e.g. letters, "flats," or larger envelopes or periodicals, parcels, etc.), the price paid for each piece of mail, and the total cost of postage paid by USPS customers for their mailings. As such, we consider the information to be proprietary in nature, and thus it should be withheld pursuant to Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3), (b)(4).

Exemption 3

FOIA Exemption 3 provides that agencies may withhold records that are exempted from disclosure by another statute that "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). Although the U.S. Postal Service is generally subject to the requirements imposed by the FOIA, 39 U.S.C. § 410(b)(1), subsection (c)(2) of section 410 provides that subsection (b)(1) does not require the disclosure of "information of a commercial nature, . . . whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed."

Because the plain language of 39 U.S.C. § 410(c)(2) explicitly addresses the issue of public disclosure of information, this statute should be construed as operating independently of and as an exempting statute within the scope of Exemption 3(B). See Wickwire Gavin, P.C. v. U.S. Postal Serv., 356 F.3d 588, 592 (4th Cir. 2004) (affirming the district court's determination that the "good business" practice exception of 39 U.S.C. § 410(c)(2) satisfies the second requirement of FOIA Exemption 3). This section was enacted as part of the Postal Reorganization Act, 39 U.S.C. §§ 101, et seq., (1970), which established the Postal Service as an independent executive branch establishment and generally directed it to conduct its operations in accordance with sound business principles.

U.S. Postal Service regulations list eight illustrative categories of "information of a commercial nature . . . which under good business practice would not be disclosed." 39 CFR § 265.6(b)(3). For instance, this includes all "[r]ecords compiled within the Postal Service which would be of potential benefit to persons or firms in economic competition with the Postal Service." 39 CFR § 265.6(b)(3)(vi). The regulations, however, do not define the term "commercial." Information may be considered commercial "if it relates to commerce, trade, or profit." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1285 (9th Cir. 1987) (interpreting "commercial" as used in FOIA fee waiver provision).

Several cases in which courts have upheld Postal Service withholding under section 410(c)(2) have concerned proprietary information. See, e.g., Wickwire Gavin v. U.S. Postal Serv., 356 F.3d 588 (4th Cir. 2004) (spreadsheets detailing quantity and pricing information in a contract between USPS and a successful bidder for a mailing supplies contract); Piper & Marbury LLP v. U.S. Postal Serv., 2001 WL 214217, at *4-5 (D.D.C. Mar. 6, 2001) (figures and data in a contract between USPS and DHL)¹; Reid v. U.S.

¹ The court in Piper & Marbury found that exemption 3, in conjunction with section 410(c)(2), was "meant to protect knowledge, figures, or data, and not entire agreements, [as] is supported by even a superficial reading of the exemptions themselves." 2001 WL 214217 at *4.

Postal Serv., No. 05-cv-294-DRH, 2006 WL 1876682, at *7-8 (S.D. Ill. July 5, 2006), modified, 2007 WL 3119803 (S.D. Ill. Oct. 24, 2007) (information in USPS mailing permits for a private marketing firm would reveal the firm's clients, mailing agents, and charges by the USPS); Airline Pilots Ass'n Int'l v. U.S. Postal Serv., Civil Action No. 03-2384, 2004 WL 5050900 (D.D.C. June 24, 2004) (information in delivery agreements between USPS and FedEx including pricing and rates).

To determine the scope of "good business practice," one looks to the commercial world, management techniques, and business law, as well as the standards of practice adhered to by large corporations. Nat'l Western Life Ins. Co. v. United States, 512 F. Supp. 454, 459 (N.D. Tex. 1980). The Postal Service may withhold information of a commercial nature if large businesses would do the same. Wickwire Gavin v. U.S. Postal Serv., 356 F.3d 588 (4th Cir. 2004). In Wickwire Gavin, an unsuccessful bidder for a contract requested a copy of the awarded contract and other documents. A copy of the contract and other documents were provided, but thirteen pages of spreadsheets detailing quantity and pricing information were withheld. The court ruled that the Postal Service properly relied on FOIA Exemption 3 in withholding the spreadsheets and rejected the requester's argument that the Postal Service should have to show that it might suffer some competitive harm if the information became public. Id. at 594-95. Rather, the court said that competitive harm may be one of many considerations embedded within the good business practice exception itself. Id. at 595.

Similar to this case, the court in Reid v. U.S. Postal Service reviewed whether certain information should be withheld or redacted from requested postage statements. The U.S. District Court in the Southern District Court of Illinois had ordered the Postal Service to provide a redacted postage statement, specifically PS Form 3602. Reid, 2007 WL 3119803, at *1. The court ordered the Postal Service to disclose the following information:

- (1) The name, address and telephone number for the holder of the permit;
- (2) "Post Office of Mailing" and "Permit #" subsections;
- (3) The signature, printed name and telephone number subsections of Section 4, but only if it *clearly* indicated the section was completed by the holder of the permit, and not by one of its agent; and
- (4) The "Verifying Employee's Signature" and "Print Verifying Employee's Name" subsections. Id.

However, the court in Reid did hold that some information contained in the postage statement is proprietary to the Postal Service and its customers and thus it would not be a good business practice to release it, and should be protected pursuant to Exemption 3, in conjunction with 39 U.S.C. 410(c)(2).² For instance, the court concluded that the type of mail (i.e. letters, flats, or parcels), mailing date, weight of a single piece, the total

² The court in Reid declined to reach the issue of whether Exemption 4 also applies because the court held that the U.S. Postal Service properly withheld information pursuant to the plaintiff's FOIA request under Exemption 3. 2006 WL 1876682 at *9.

weight, and the number of containers is considered proprietary and may be redacted. Id. at *8. Other information on the form was found to be proprietary because it would reveal the permit holder's profits, rates charged to the permit holder's customers, and other information that could put the Postal Service and its customers at a competitive disadvantage. Id.

Postage statements have traditionally been treated as sensitive, commercial business information because they reveal mailing patterns of particular customers. Such information is valuable to competitors of both the Postal Service and of the mailer. Although it is true that the information on these requested postage statements pertains to an organization that is not a commercial enterprise or was mailed in connection with an election campaign that is now over, the disclosure of information could potentially impair the relationship between the Postal Service and its customers, who are commercial enterprises, and would accordingly be contrary to good business practice.

In general, it is reasonable to expect that a business, whether it is the submitter or the Postal Service, would suffer competitive harm if the Postal Service were to disclose information submitted by its customers when similar information would not be disclosed by firms in competition with the business. See, e.g., Westinghouse Elec. Corp. v. Schlesinger, 392 F. Supp. 1246, 1249 (E.D. Va. 1974), aff'd, 542 F.2d 1190 (4th Cir. 1976). For all of the reasons stated above, the requested records were properly protected and redacted pursuant to FOIA Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).

Exemption 4

The financial information was also properly withheld under FOIA Exemption 4. Exemption 4 permits agencies to withhold "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." 5 U.S.C. § 552(b)(4). Financial or commercial information that is *voluntarily* provided to the government is afforded protection as "confidential" information "if it is of a kind that would customarily not be released to the public by the person from whom it was obtained." Critical Mass Energy Project v. Nuclear Regulatory Comm'n, 975 F.2d 871, 879 (D.C. Cir. 1992); see also McDonnell Douglas Corp. v. NASA, 180 F.3d 303, 305 (D.C. Cir. 1999). Information that is *required* to be submitted to the government, on the other hand, is ordinarily released unless it poses a "likelihood of substantial harm to the competitive positions of the parties from whom it has been obtained." National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 771 (D.C. Cir. 1974).

The D.C. Circuit has prescribed an objective test in determining whether information is provided voluntarily – "actual legal authority, rather than parties' beliefs or intentions, governs judicial assessments of the character of submissions ... if an agency has no authority to enforce an information request, submissions are not mandatory." Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin., 244 F.3d 144, 149 (D.C. Cir. 2001). The court in Airline Pilots Ass'n, Int'l found that the USPS did not have legal authority to compel FedEx to submit the redacted information, including pricing and rate information, operational details and specifications, performance requirements and obligations, and negotiated general terms and conditions. 2004 WL 5050900, at *5. Because customers generally are not required to use the Postal Service to distribute their publications or other mailable materials and may employ an alternate delivery firm, the Postal Service

takes the position that postage statements are submitted "on a voluntary basis" for the purpose of Exemption 4.

Information may be considered exempt from disclosure if it is information that is not customarily released to the public. Critical Mass, 975 F.2d at 879; Ctr. for Auto Safety, 244 F.3d at 147-48; Airline Pilots Ass'n, Int'l, 2004 WL 5050900 at *5. Exemption 4 categorically protects proprietary information contained in postage statements from disclosure since the information is not customarily released to the public. See Judicial Watch v. U.S. Dept. of Energy, 310 F.Supp.2d 271, 308 (D.D.C. 2004) (remarking that the submitter "has indicated that [the requested documents] are not customarily disclosed to the public"); Cortez III Serv. Corp. v. NASA, 921 F. Supp. 8, 13 (D.D.C. 1996) (noting that the submitter's "unrefuted sworn affidavits attest to the fact that G & A rate ceilings are the type of information that is not regularly disclosed to the public"). Thus, Exemption 4 protects portions of PS Form 3602 from disclosure.

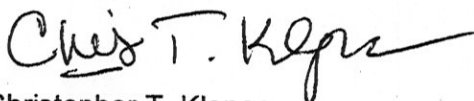
III. Conclusion

This is the final decision of the Postal Service on your right of access pursuant to the FOIA to these records. You may obtain judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have your principal place of business, the district in which the records are located, or in the District of Columbia.

As an alternative to litigation, you may wish to utilize the services of the Office of Government Information Services (OGIS), National Archives and Records Administration. OGIS was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996;
Facsimile: 301-837-0348;
Toll-free: 1-877-684-6448

For the General Counsel,



Christopher T. Klepac
Chief Counsel
FOIA/Privacy and Government Relations

cc: Mr. Enriquez
Ms. Eyre

1 Gary S. Winuk
2 Zachary Norton
3 Fair Political Practices Commission
4 428 J Street, Suite 620
5 Sacramento, California 95814
6 Telephone: (916) 322-5660

7 Attorneys for Complainant

8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11 In re the Matter of

FPPC Subpoena Number 08/729-01

12 FAIR POLITICAL PRACTICES
13 COMMISSION
14 CASE NUMBER 08/729

DECLARATION IN SUPPORT OF
INVESTIGATIVE SUBPOENA
(DUCES TECUM)

15 I, Tino Salinas, declare as follows:

16 1. I am a Special Investigator employed by the Fair Political Practices Commission of the
17 State of California.

18 2. The Fair Political Practices Commission is empowered by section 83115 of the
19 Government Code to investigate possible violations of the Political Reform Act, contained in
20 sections 81000 through 91014 of the Government Code.

21 3. Consistent with my duties as a Special Investigator, I am investigating a possible
22 violation of section 82041.5 of the Government Code involving sender identification
23 requirements for a mass mailing.

24 4. The witness specified in the attached Investigative Subpoena (Duces Tecum) has
25 possession or control of documents or records pertaining to Permit No. 2058, Los Angeles, CA,
26 which according to your records is assigned to Committee Against Measure BB, P.O. Box 1882,
27 Manhattan Beach, CA (as it appears on the attached mailpieces). It is our belief that one or both
28

1 mailpieces were delivered via USPS on or about October 9th, 10th, and 22nd 2008. We are
2 requesting the following information:

3 a) On the above referenced dates, how many pieces were delivered?

4 5. Said documents are material to my investigation, in that they will enable us to determine
5 the actual amount of mailers that were produced and distributed.

6 6. I have made reasonable efforts to obtain the documents from the witness on a voluntary
7 basis, but I have not been able to do so.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct.

10
11 Date: 7/7/10

Tino Salinas

Tino Salinas
Special Investigator

Committee Against Measure BB
P.O. Box 1882
Manhattan Beach, CA 90267

PRST STD
U.S. POSTAGE
PAID
LOS ANGELES, CA
PERMIT NO. 2058

*****AUTO**5-DIGIT 90266
ELLEN & WARREN CHAO
1731 WALNUT AVE
MANHATTAN BEACH CA 90266-5016

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Enough is Enough! Let's not pass another bond measure boondoggle.

Gary S. Winuk Zak Norton Fair Political Practices Commission 428 J Street, Suite 620 Sacramento, CA 95814 Telephone No.: (916) 322-5660 FAX (916) 322-1932 Attorneys for Complainant		
In the Matter of Fair Political Practices Commission Case Number 08/729-01		
INVESTIGATIVE SUBPOENA (DUCES TECUM) For Personal Appearance and Production of Documents and Things AND DECLARATION		Subpoena Number 08/729-01

THE PEOPLE OF THE STATE OF CALIFORNIA, TO

General Counsel
 United States Postal Service
 475 L'Enfant PLZ SW Rm. 6004
 Washington DC 20260

1. YOU ARE (item a or b must be checked):

- a. ☐ Ordered to appear in person and to produce the records described in the attached declaration. The personal attendance of the custodian or other qualified witness, and the production of the original records are required by this subpoena.
- b. ☒ Not required to appear in person if, 5 days prior to the date shown in item 1, you produce (i) a true, legible, and durable copy of the records described in the attached declaration, and (ii) a completed declaration of custodian of records. (1) Place a copy of the records in an envelope. Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope, or clearly write on the envelope the case number, the subpoena number, the witness name, and the date of the subpoena. (3) Place this first envelope in an outer envelope, seal it, and mail it to >, at the Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. If you have been served with this subpoena as a custodian of financial records under Government Code sections 7470 and 7474, the records are to be produced not later than 5 days prior to the date and time shown in item 1, unless you receive notice that the customer has moved to quash the subpoena, but not sooner than 10 days after the date that the customer was served with a copy of the subpoena.

2. IF YOU HAVE ANY QUESTIONS ABOUT THIS SUBPOENA, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Tino Salinas

Telephone number: (916) 322-8246

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY A COURT.

Date issued: 7/7/10


 Roman G. Porter

Executive Director, Fair Political Practices Commission

(Declaration in support of subpoena attached)

1 GARY S. WINUK
2 Chief of Enforcement
3 Zak Norton
4 Commission Counsel
5 FAIR POLITICAL PRACTICES COMMISSION
6 428 J Street, Suite 620
7 Sacramento, CA 95814
8 Telephone: (916) 322-5660

9 Attorneys for Complainant

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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In re the Matter of

FPPC Subpoena Number 08/729-01

FAIR POLITICAL PRACTICES
COMMISSION CASE NUMBER 08/729

DECLARATION OF CUSTODIAN OF
RECORDS

I, (name of custodian of records) _____, declare as follows:

1. I am a duly authorized custodian of records for USPS, and I have authority to certify its records.

2. In response to Subpoena 08/729-01, I have diligently searched the records maintained by USPS, and:

- a. ☐ I have provided a true copy of all of the records described in the subpoena.
b. ☐ I have provided a true copy of all of the records described in the subpoena, except for the following document(s), which have not been produced for the reasons stated herein:

Record(s)	Reason(s) Not Produced

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c. ☐ USPS does not have within its possession or control any of the records described the subpoena.

3. Any and all records produced pursuant to the subpoena were prepared by the personnel of USPS in the ordinary course of business, at or near the time of the act, condition, or event, to which the records pertain.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in (city) _____, (state) _____, on (date) _____, 2010.

(Printed Name of Custodian of Records)

(Signature of Custodian of Records)

Department of Labor. Requests for authorization to produce these records shall be addressed to: Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210-0001. Also notify the attorney responsible for the issuance of the subpoena or court order.

(4) Employee medical records are primarily under the exclusive jurisdiction of the U.S. Civil Service Commission. The Commission has delegated authority to the Postal Service and to the Commission's Regional Directors to release medical information, in response to proper requests and upon competent medical advice, in accordance with the following criteria:

(i) Except in response to a subpoena or court order, do not release any medical information about an employee to any non-Federal entity or individual without authorization from the employee.

(ii) With authorization from the employee, the Area, Information Systems Service Center, or Chief Field Counsel will respond as follows to a request from a non-Federal source for medical information:

(a) If, in the opinion of a Federal medical officer, the medical information indicates the existence of a malignancy, a mental condition, or other condition about which a prudent physician would hesitate to inform a person suffering from such a condition as to its exact nature and probable outcome, do not release the medical information to the employee or to any individual designated by him, except to a physician, designated by the employee in writing. If a subpoena or court order was issued, the responding official shall caution the moving party as to the possible dangers involved if the medical information is divulged.

(b) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person of the exact nature and probable outcome of his condition, release it in response to a subpoena or court order, or to the employee or to any person, firm, or organization he authorizes in writing.

(c) If a Federal medical officer is not available, refer the request to the Civil Service Commission regional office with the medical certificates or other medical reports concerned.

(5) Do not release any records containing information as to the employee's security or loyalty.

(6) Honor subpoenas or court orders only when disclosure is authorized.

(7) When authorized to comply with a subpoena duces tecum, do not leave the original records with the court.

(b) [Reserved]

[40 FR 7331, Feb. 19, 1975, as amended at 51 FR 26396, July 23, 1986; 56 FR 55634, Oct. 30, 1991. Redesignated at 56 FR 59634, Nov. 7, 1991; 60 FR 39712, July 13, 1995; 60 FR 37345, Nov. 15, 1995]

§ 265.12 Demands for testimony or records in certain legal proceedings.

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service;

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress;

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules in §265.11).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act, 5 U.S.C. 552a.

(b) *Definitions.* The following definitions apply to this section:

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

(3) *Employee* means a current employee or official of the Postal Service.

(4) *General Counsel* means the General Counsel of the United States Postal Service, the Chief Field Counsels, or an employee of the Postal Service acting for the General Counsel under a delegation of authority.

(5) *Legal proceeding means:*

(i) A proceeding before an adjudicative authority;

(ii) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress; or

(iii) An administrative proceeding.

(6) *Private litigation* means a legal proceeding to which the United States is not a party.

(7) *Records custodian* means the employee who maintains a requested record. For assistance in identifying the custodian of a specific record, contact the Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, telephone (202) 268-2608.

(8) *Testimony* means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

(9) *United States* means the federal government of the United States and any of its agencies, establishments, or

instrumentalities, including the United States Postal Service.

(c) *Requirements for submitting a demand for testimony or records.* (1) Ordinarily, a party seeking to obtain records from the Postal Service should submit a request in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Postal Service's regulations implementing the FOIA at 39 CFR 265.1 through 265.9 or the Privacy Act, 5 U.S.C. 552a and the Postal Service's regulations implementing the Privacy Act at 39 CFR 266.1 through 266.9.

(2) A demand for testimony or records issued pursuant to the rules governing the legal proceeding in which the demand arises must:

(i) Be in writing;

(ii) Identify the requested record and/or state the nature of the requested testimony, describe the relevance of the record or testimony to the proceeding, and why the information sought is unavailable by any other means; and

(iii) If testimony is requested, contain a summary of the requested testimony and a showing that no document could be provided and used in lieu of testimony.

(3) Procedures for service of demand are made as follows:

(i) Service of a demand for testimony or records (including, but not limited to, personnel or payroll information) relating to a current or former employee must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the District Manager, Customer Services and Sales, for all current employees whose work location is within the geographic boundaries of the manager's district, and any former employee whose last position was within the geographic boundaries of the manager's district. A demand for testimony or records must be received by the employee whose testimony is requested and the appropriate District Manager, Customer Services and Sales, at least ten (10) working days before the date the testimony or records are needed.

(ii) Service of a demand for testimony or records other than those described in paragraph (c)(3)(i) of this section must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington DC 20260-1100, or the Chief Field Counsel. A demand for testimony or records must be received by the employee and the General Counsel or Chief Field Counsel at least ten (10) working days before the date testimony or records are needed.

(d) *Procedures followed in response to a demand for testimony or records.* (1) After an employee receives a demand for testimony or records, the employee shall immediately notify the General Counsel or Chief Field Counsel and request instructions.

(2) An employee may not give testimony or produce records without the prior authorization of the General Counsel.

(3)(i) The General Counsel may allow an employee to testify or produce records if the General Counsel determines that granting permission:

(A) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, privileges, rules, authority, and regulations; and

(B) Would not be contrary to the interest of the United States. The interest of the United States includes, but is not limited to, furthering a public interest of the Postal Service and protecting the human and financial resources of the United States.

(ii) An employee's testimony shall be limited to the information set forth in the statement described at paragraph (c)(2) of this section or to such portions thereof as the General Counsel determines are not subject to objection. An employee's testimony shall be limited to facts within the personal knowledge of the employee. A Postal Service employee authorized to give testimony under this rule is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with re-

spect to privileged subject matter. The General Counsel may waive the prohibition of expert testimony under this paragraph only upon application and showing of exceptional circumstances and the request substantially meets the requirements of this section.

(4) The General Counsel may establish conditions under which the employee may testify. If the General Counsel authorizes the testimony of an employee, the party seeking testimony shall make arrangements for the taking of testimony by those methods that, in the General Counsel's view, will least disrupt the employee's official duties. For example, at the General Counsel's discretion, testimony may be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(5) If a response to a demand for testimony or records is required before the General Counsel determines whether to allow an employee to testify, the employee or counsel for the employee shall do the following:

(i) Inform the court or other authority of the regulations in this section; and

(ii) Request that the demand be stayed pending the employee's receipt of the General Counsel's instructions.

(6) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the General Counsel's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and the regulations in this section.

(7) The General Counsel may request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Postal Service and the employee.

(8) At his or her discretion, the General Counsel may grant a waiver of any procedure described by this section, where waiver is considered necessary to promote a significant interest of the United States or for other good cause.

(9) If it otherwise is permissible, the records custodian may authenticate, upon the request of the party seeking

United States Postal Service

§ 265.13

disclosure, copies of the records. No employee of the Postal Service shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

(e) *Postal Service employees as expert witnesses.* No Postal Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the General Counsel may approve such expert testimony in private litigation. A Postal Service employee may not testify as such an expert witness without the express authorization of the General Counsel. A litigant must obtain authorization of the General Counsel before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

(60 FR 17224, Apr. 5, 1995, as amended at 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56558, Oct. 1, 2003)

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

(a) *Applicability of this section.* The rules in this section apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under 5 CFR part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not

Eyre, Jane G - Washington, DC

From: Corinna Zarek [Corinna.Zarek@nara.gov]
Sent: Thursday, June 23, 2011 2:24 PM
To: Eyre, Jane G - Washington, DC
Subject: Fwd: FOIA USPS
Attachments: Document Request.PDF

Jane,

Attached is the string of correspondence (in reverse chron) including the initial subpoena sent to USPS. Any light you can shed on this including whether it was properly treated as a FOIA request, and, if so, whether properly processed would be great.

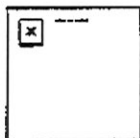
Thanks for your help, as always.
Corinna

Corinna Zarek
Attorney Advisor
Office of Government
Information Services
8601 Adelphi Rd., Rm. 2510
College Park, MD 20740
Dir: 301.837.3788
Main: 301.837.1996
Fax: 301.837.0348

www.archives.gov/ogis

>>> Zachary Norton <ZNorton@fpcc.ca.gov> 6/23/2011 2:19 PM >>>
Ms. Zarek-

Attached are the documents pertaining to the request for records from the USPS. Included are scanned copies of the original subpoena, replies for various employees of USPS, and our agencies FOIA request, and the USPS's reasons for its denial.



Zachary W. Norton
Commission Counsel, Enforcement Division
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620 | Sacramento, CA 95814
916.322.3956 Office | 916.322.1932 Fax | znorton@fpcc.ca.gov

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8/9/2011

such requests are reviewed under the Freedom of Information. Accordingly, that is how the request was processed.

In the response to FPPC by Rodger Enriquez of Mailing Requirements (in accordance with Postal Service guidelines which implement the FOIA), certain information was withheld under FOIA Exemption 3, in conjunction with 39 USC 410(c)(2), and Exemption 4. FPPC was provided in the response with procedures on how to appeal the response.

FPPC submitted an appeal to the Office of the General Counsel. On January 10, 2011, Mr. Christopher Klepac responded to the appeal and upheld the initial decision. Mr. Klepac informed Mr. Norton, FPPC, of his right seek obtain judicial review in US District Court or to utilize the services of the Office of Government Information Services (OIGS).

Based on my review of the documentation, it appears that this request was properly handled in accordance with Postal Service release of Information regulations found in 39 Code of Federal Regulations 265. The information withheld consisted of propriety information of a Postal Service customer. It is not a good practice for the Postal Service to disclose this type of information to a third party and it was properly withheld under Exemptions 3 and 4.

Mr. Norton's right to seek judicial review in federal district court remains intact should he wish to pursue this matter.

Please let me know if I can be of further assistance.

Jane Eyre

Mgr, Records Office

U.S. Postal Service

202-268-2144

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Thursday, June 23, 2011 2:24 PM
To: Eyre, Jane G - Washington, DC
Subject: Fwd: FOIA USPS

Jane,

Attached is the string of correspondence (in reverse chron) including the initial subpoena sent to USPS. Any light you can shed on this including whether it was properly treated as a FOIA request, and, if so, whether properly processed would be great.

Thanks for your help, as always.
Corinna

Corinna Zarek
Attorney Advisor
Office of Government
Information Services

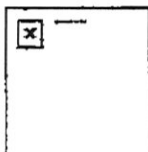
8/9/2011

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Fax: 301.837.0348

www.archives.gov/ogis

>>> Zachary Norton <ZNorton@fppc.ca.gov> 6/23/2011 2:19 PM >>>
Ms. Zarek-

Attached are the documents pertaining to the request for records from the USPS. Included are scanned copies of the original subpoena, replies for various employees of USPS, and our agencies FOIA request, and the USPS's reasons for its denial.



Zachary W. Norton
Commission Counsel, Enforcement Division
FAIR POLITICAL PRACTICES COMMISSION
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8/9/2011

Zachary Norton

From: Rowe, Geraldine O - Long Beach, CA [geraldine.o.rowe@usps.gov]
Sent: Wednesday, November 17, 2010 12:38 PM
To: Zachary Norton
Cc: Enriquez, Rodger - Los Angeles, CA
Subject: FW: Postal Records
Attachments: 39 cfr 265.12.pdf

Mr. Norton - This responds to your inquiry to Mr. Enriquez regarding whether the Postal Service's response to FPPC's inquiry for records is affected by the fact that the FPPC is a government agency that issued a subpoena. Unfortunately, in this instance, the answer is no. The Postal Service is required to follow its own regulations when responding to subpoenas. These regulations are located in 39 C.F.R. Section 265.12. I am attaching a copy for your reference. As these regulations explain, assuming the Postal Service is not a party to the litigation, requests for records are reviewed under the Freedom of Information and Privacy Acts. That is how your request was analyzed.

However, as was set forth in Mr. Enriquez's November 2, 2010 letter to you, you have the right to appeal his decision to the Chief Counsel, Customer Programs. I apologize that we cannot assist you further at this time. I encourage you to take advantage of these appeal procedures.

Thank you.

Geraldine O. Rowe
Deputy Managing Counsel
Pacific Area - Long Beach Law Office
300 Long Beach Blvd., Room 240
Long Beach, CA 90802-2496
562-628-1340
FAX: 562-628-1369

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From: Zachary Norton [mailto:ZNorton@fppc.ca.gov]
Sent: Monday, November 15, 2010 4:41 PM
To: Enriquez, Rodger - Los Angeles, CA
Subject: Postal Records
Mr. Enriquez-

Thank you for taking the time to speak with me regarding records for Los Angeles Permit Number 2058 this afternoon. As I mentioned earlier, The Fair Political Practices Commission is a government agency that issued a subpoena for records relating to mailings sent out with this permit on or about October 9th, 10, and 22 of 2008. Specifically, we wanted to know how many pieces of mail were sent out using this permit on these dates. I have included a copy of the original subpoena for your reference. Please feel free to contact me directly with any questions at (916) 322-3956.



Zachary W. Norton
Commission Counsel, Enforcement Division
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620 | Sacramento, CA 95814
916.322.3956 Office | 916.322.1932 Fax | znorton@fppc.ca.gov

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Klepac, Christopher T - Washington, DC

From: Klepac, Christopher T - Washington, DC
Sent: Tuesday, August 09, 2011 10:43 AM
To: Wood, Alexander W - Washington, DC
Subject: Fw: FW: FOIA USPS

Fyi
Christopher T. Klepac
Sent from my BlackBerry Wireless Handheld

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Tuesday, August 09, 2011 07:26 AM
To: Eyre, Jane G - Washington, DC
Cc: Klepac, Christopher T - Washington, DC
Subject: RE: FW: FOIA USPS

Let's do 4:00. I'll ask for a conference line and forward the information as soon as they send it back over to me.
Thanks for taking the time to talk with us.

Corinna Zarek
Attorney Advisor
Office of Government Information Services
8601 Adelphi Rd., Rm. 2510
College Park, MD 20740
Dir: 301.837.3788
Main: 301.837.1996
Fax: 301.837.0348

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>>> "Eyre, Jane G - Washington, DC" <Jane.G.Eyre@usps.gov> 8/8/2011 4:44 PM >>>
Corinna,

We are only available after 2:00 tomorrow. Would 3:00 or 4:00 work for you?

Otherwise, we can look at Wednesday or Thursday.

Jane

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Monday, August 08, 2011 4:28 PM
To: Eyre, Jane G - Washington, DC
Cc: Klepac, Christopher T - Washington, DC
Subject: RE: FW: FOIA USPS

We've got a staff meeting that starts at 2 tomorrow, could we say 1:30? Thanks!

8/9/2011

Corinna Zarek
Attorney Advisor
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>>> "Eyre, Jane G - Washington, DC" <Jane.G.Eyre@usps.gov> 8/8/2011 2:41 PM >>>

Corinna,

I have a 10:00 appt - how about 2:00 pm?

Jane

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Wednesday, August 03, 2011 8:21 AM
To: Eyre, Jane G - Washington, DC
Cc: Klepac, Christopher T - Washington, DC
Subject: Re: FW: FOIA USPS

Jane,

Thanks for getting back to me. Is there a particular time that would work best for you both on Tuesday? If your day is open, could we say 11 a.m.? I'll set up a conference line and pass along the dial-in information once I hear back from you on a time.

Thanks,
Corinna

>>> "Eyre, Jane G - Washington, DC" <Jane.G.Eyre@usps.gov> 8/2/2011 8:03 PM >>>
Tuesday will be fine

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Tuesday, August 02, 2011 02:32 PM
To: Eyre, Jane G - Washington, DC
Cc: Klepac, Christopher T - Washington, DC
Subject: RE: FW: FOIA USPS

Jane,

Would next Tuesday work for you to talk briefly with OGIS staff? I appreciate your making the time to talk with us and it would be great to get this call set up this week so we can plan ahead for next week. If not Tuesday, we have availability Wednesday afternoon or Thursday.

Thank you,
Corinna

>>> Corinna Zarek 7/27/2011 4:29 PM >>>

8/9/2011

Jane,

Thanks for getting back with me. We can talk any time on Tuesday, Aug. 9. Just let us know what works best for you and we'll set up a conference line.

Thanks much,
Corinna

Corinna Zarek
Attorney Advisor
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Main: 301.837.1996
Fax: 301.837.0348

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>>> "Eyre, Jane G - Washington, DC" <Jane.G.Eyre@usps.gov> 7/27/2011 4:25 PM >>>
Corinna,

My apologies that we will not be able to speak with you about this matter until the week of August 8. Please let us know if there is a date & time that we that you would be available.

Jane Eyre
Mgr, Records Office
USPS
202-268-2144

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Friday, July 22, 2011 4:28 PM
To: Eyre, Jane G - Washington, DC
Cc: Klepac, Christopher T - Washington, DC
Subject: RE: FW: FOIA USPS

Jane and Chris,

Thanks for the explanation. I was talking this over with the OGIS deputy director, Karen Finnegan, and we're both just having a hard time seeing the Exemption 4 concerns on releasing an aggregate number versus releasing pricing data where it's much more clear. Would you have 10-15 minutes sometime next week to have a brief call with us so we can talk with you about this? We want to make sure we both have a clear understanding before we go back to our OGIS customer here.

Thanks so much,
Corinna

Corinna Zarek
Attorney Advisor

8/9/2011

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>>> "Eyre, Jane G - Washington, DC" <Jane.G.Eyre@usps.gov> 7/18/2011 10:09 AM >>>

Postage statements have traditionally been treated as sensitive, commercial business information because they reveal mailing patterns of particular customers. Such information is valuable to competitors of both the Postal Service and of the mailer. Although it is true that the information on these requested postage statements pertains to an organization that is not a commercial enterprise or was mailed in connection with an election campaign that is now over, the disclosure of information could potentially impair the relationship between the Postal Service and its customers, who are commercial enterprises, and would accordingly be contrary to good business practice.

In general, it is reasonable to expect that a business, whether it is the submitter or the Postal Service, would suffer competitive harm if the Postal Service were to disclose information submitted by its customers when similar information would not be disclosed by firms in competition with the business.

The Postal Reorganization Act established the Postal Service as an independently executive branch establishment and generally directed it to conduct its operation in accordance with sound business principles. 39 USC 410(b)(1), subsection (c)(2) of 410 provides that subsection (b)(1) does not require the disclosure of "information of a commercial nature,...whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed." The information that was withheld, falls into this category.

Jane Eyre
Mgr, Records Office
202-268-2144

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Friday, July 15, 2011 2:51 PM
To: Eyre, Jane G - Washington, DC
Subject: RE: FW: FOIA USPS

Jane,

The redacted form was included in that pdf packet I sent you on June 23, that you also attached in your message of July 1.

I'm a little confused about application of the unit pricing argument here. The requester is not seeking pricing information at all -- he does not want the price per piece, nor the total price, he only wants to know the total number of pieces mailed. I'm having a hard time seeing how these exemptions would be required for that particular field?

Thanks,
Corinna

8/9/2011

Corinna Zarek
Attorney Advisor
Office of Government Information Services
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Dir: 301.837.3788
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Fax: 301.837.0348

www.archives.gov/ogis

>>> "Eyre, Jane G - Washington, DC" <Jane.G.Eyre@usps.gov> 7/12/2011 3:16 PM >>>
Corinna,

I did not see the form, but it likely involves unit pricing. If the unit pricing is left in, you can back in to the mail piece numbers. There are a series of forms under the PSF 3602 designation and are online at <http://www.usps.com/forms/allforms.htm>.

Postal Service policy has not changed with regard to the release of this type of information. I do not know under what circumstances this information may have previously been provided to the State, and I have no knowledge of it.

Let me know if you have further questions. I can be reached at 202-268-2144

Jane Eyre
Manager, Records Office
USPS

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Tuesday, July 05, 2011 10:39 AM
To: Eyre, Jane G - Washington, DC
Subject: Re: FW: FOIA USPS

Jane,

Thanks for taking the time to go through all of this.

One question that I had -- since I'm not terribly familiar with USPS practice -- pertains to the rate(s) charged senders such as this one. Is it just a flat postal rate that this sort of permit allows for? Or is there more of a "unit pricing" argument here?

Another matter that Mr. Norton raised with me is that he was typically able to (informally ask for (and obtain) the numbers of pieces of mail sent before this inquiry. Has USPS policy changed in requiring a formal request for that type of information?

I understand that the agency's position is firm and final; however, any additional information I can provide is helpful.

Thank you,
Corinna

8/9/2011

Corinna Zarek
Attorney Advisor
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>>> "Eyre, Jane G - Washington, DC" <Jane.G.Eyre@usps.gov> 7/1/2011 11:00 AM >>>

Ms. Zarek,

This responds to your inquiry regarding a complaint your office received concerning an "investigative subpoena" submitted to the Postal Service by Mr. Zachary Norton of the Fair Political Practices Commission, Sacramento, CA.

A review of relevant records shows that Ms. Geraldine Rowe, Deputy Managing Counsel, Pacific Area-Long Beach Law Office, sent an email to Mr. Zachary Norton on November 17, 2010. She informed Mr. Norton that the inquiry for records (the subpoena) is affected by the fact that the FPPC is a (state) government agency that issued a subpoena, but that the Postal Service is required to follow its own regulations when responding to subpoenas as set forth in 39 CFR Section 265.12. Ms. Rowe provided Mr. Norton with a copy of 39 CFR Section 265.12 for reference. She further explained that, assuming the Postal Service is not a party to the litigation, such requests are reviewed under the Freedom of Information. Accordingly, that is how the request was processed.

In the response to FPPC by Rodger Enriquez of Mailing Requirements (in accordance with Postal Service guidelines which implement the FOIA), certain information was withheld under FOIA Exemption 3, in conjunction with 39 USC 410(c)(2), and Exemption 4. FPPC was provided in the response with procedures on how to appeal the response.

FPPC submitted an appeal to the Office of the General Counsel. On January 10, 2011, Mr. Christopher Klepac responded to the appeal and upheld the initial decision. Mr. Klepac informed Mr. Norton, FPPC, of his right seek obtain judicial review in US District Court or to utilize the services of the Office of Government Information Services (OIGS).

Based on my review of the documentation, it appears that this request was properly handled in accordance with Postal Service release of information regulations found in 39 Code of Federal Regulations 265. The information withheld consisted of propriety information of a Postal Service customer. It is not a good practice for the Postal Service to disclose this type of information to a third party and it was properly withheld under Exemptions 3 and 4.

Mr. Norton's right to seek judicial review in federal district court remains intact should he wish to pursue this matter.

Please let me know if I can be of further assistance.

Jane Eyre

Mgr, Records Office

8/9/2011

U.S. Postal Service

202-268-2144

From: Corinna Zarek [mailto:Corinna.Zarek@nara.gov]
Sent: Thursday, June 23, 2011 2:24 PM
To: Eyre, Jane G - Washington, DC
Subject: Fwd: FOIA USPS

Jane,

Attached is the string of correspondence (in reverse chron) including the initial subpoena sent to USPS. Any light you can shed on this including whether it was properly treated as a FOIA request, and, if so, whether properly processed would be great.

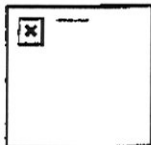
Thanks for your help, as always.
Corinna

Corinna Zarek
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>>> Zachary Norton <ZNorton@fpcc.ca.gov> 6/23/2011 2:19 PM >>>
Ms. Zarek-

Attached are the documents pertaining to the request for records from the USPS. Included are scanned copies of the original subpoena, replies for various employees of USPS, and our agencies FOIA request, and the USPS's reasons for its denial.



Zachary W. Norton
Commission Counsel, Enforcement Division
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8/9/2011

destroy all copies of the original message.

8/9/2011

Small, Wylene E - Washington, DC

From: Chavannes-Battle, Nancy P - Washington, DC
Sent: Wednesday, February 08, 2012 4:32 PM
To: Small, Wylene E - Washington, DC
Subject: FW: 11-019 Norton final.doc
Attachments: 11-019%20Norton%20final.doc

I do not know if you have this one.

From: Eyre, Jane G - Washington, DC
Sent: Tuesday, February 07, 2012 1:59 PM
To: Chavannes-Battle, Nancy P - Washington, DC
Subject: FW: 11-019 Norton final.doc

FYI:

From: Meadows, B Jeff - Washington, DC
Sent: Tuesday, February 07, 2012 10:22 AM
To: Eyre, Jane G - Washington, DC
Cc: Klepac, Christopher T - Washington, DC; Wood, Alexander W - Washington, DC
Subject: FW: 11-019 Norton final.doc

Jane, here is the Norton appeal, 11-019. Alex Wood worked on this one, so I have copied him on this message. As you'll see, this appeal is from the California FPPC. As noted below, there is another appeal out there from the FPPC – I can look for this one a well (?)..

Re: the message below – Jane, I think your “upholding” mentioned below referred to your communications with OGIS when the FPPC asked OGIS to look into this matter after they received our appeal decision (I think I have my facts straight here).

B.J. Meadows III
Attorney, Legal Strategy Section
United States Postal Service
(202) 268-3009

From: Meadows, B Jeff - Washington, DC
Sent: Friday, January 13, 2012 4:58 PM
To: Bartholf, Frank M - St Louis, MO
Cc: Klepac, Christopher T - Washington, DC; Eyre, Jane G - Washington, DC
Subject: 11-019 Norton final.doc

Finally pulled up this appeal: first I couldn't find the hard copy file, and then I could not get the spreadsheet to cooperate. But here it is. It is indeed an appeal from the California Fair Political Practices Commission. So this appeal involved a separate, later FOIA request than the one we saw as an attachment to an earlier email message today.

On a quick read of our appeal decision, we upheld redactions made to a 2008 political mailing

2/8/2012

statement under FOIA Exemptions 3 and 4 - as commercially sensitive, "proprietary" information. The FPPC apparently does not like our decision and has filed suit.

Jane, one of the emails from today (from Geraldine Rowe, I think) said you "upheld" this matter on July 1, 2011; but that date follows Chris's appeal decision here, on Jan. 10, 2011. Maybe this reference was to another FOIA request for similar political mailing information? Jeff

*B.J. Meadows III
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(202) 268-3009*

2/8/2012



VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 10, 2011

Mr. Zachary W. Norton, Esq.
Staff Counsel, Enforcement Division
Fair Political Practices Commission, State of California
428 J Street, Suite 620
Sacramento, CA 95814-2329

Re: Freedom of Information Act Appeal 11-019

Dear Mr. Norton:

This responds to your letter dated November 23, 2010, which was received in our office on December 10, 2010, in which you appeal the response to your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

I. Background

By correspondence dated July 7, 2010, you requested a copy of records that shows how many pieces were delivered for Permit Number 2058 “on or about October 9th, 10th, and 22nd 2008.” By letter dated November 2, 2010, Mailing Requirements provided you a copy of two PS Forms 3602 for Permit Number 2058 that were redacted pursuant to FOIA Exemptions 3, in conjunction with 39 U.S.C. § 410(c)(2), and 4. Also, that office advised that the Postal Service “does not generally track deliveries of mail of this nature, but does track the amount of mail that it receives.” By letter dated November 23, 2010, you appealed the redactions for (1) the number of pieces mailed, (2) mailing costs, and (3) the mailing dates. You stated that the exemptions are inapplicable because the “mailings were not sent out by a business entity or other commercial enterprise” and “they were mailed in connection with an election campaign that is now over.”

After review, we are upholding the initial decision for the reasons set forth below.

II. Analysis

The FOIA generally requires government agencies to disclose records within their possession. However, the FOIA contains several exemptions that permit agencies to withhold certain records. See 5 U.S.C. § 552(b)(1)-(9).

The commercial information contained on PS Form 3602, Postal Service Statement of Mailing/3607 Weighing and Dispatch Certificate, was properly withheld pursuant to Exemption 3, in conjunction with 39 U.S.C. § 410(c)(2), and Exemption 4, on the grounds that such information is proprietary in nature and it would not be good business practice to disclose it. For instance, PS Form 3602 contains proprietary information

such as the total number of pieces mailed, the "processing category" or type of mail piece utilized for communication (e.g. letters, "flats," or larger envelopes or periodicals, parcels, etc.), the price paid for each piece of mail, and the total cost of postage paid by USPS customers for their mailings. As such, we consider the information to be proprietary in nature, and thus it should be withheld pursuant to Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3), (b)(4).

Exemption 3

FOIA Exemption 3 provides that agencies may withhold records that are exempted from disclosure by another statute that "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). Although the U.S. Postal Service is generally subject to the requirements imposed by the FOIA, 39 U.S.C. § 410(b)(1), subsection (c)(2) of section 410 provides that subsection (b)(1) does not require the disclosure of "information of a commercial nature, . . . whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed."

Because the plain language of 39 U.S.C. § 410(c)(2) explicitly addresses the issue of public disclosure of information, this statute should be construed as operating independently of and as an exempting statute within the scope of Exemption 3(B). See Wickwire Gavin, P.C. v. U.S. Postal Serv., 356 F.3d 588, 592 (4th Cir. 2004) (affirming the district court's determination that the "good business" practice exception of 39 U.S.C. § 410(c)(2) satisfies the second requirement of FOIA Exemption 3). This section was enacted as part of the Postal Reorganization Act, 39 U.S.C. §§ 101, et seq. (1970), which established the Postal Service as an independent executive branch establishment and generally directed it to conduct its operations in accordance with sound business principles.

U.S. Postal Service regulations list eight illustrative categories of "information of a commercial nature . . . which under good business practice would not be disclosed." 39 CFR § 265.6(b)(3). For instance, this includes all "[r]ecords compiled within the Postal Service which would be of potential benefit to persons or firms in economic competition with the Postal Service." 39 CFR § 265.6(b)(3)(vi). The regulations, however, do not define the term "commercial." Information may be considered commercial "if it relates to commerce, trade, or profit." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1285 (9th Cir. 1987) (interpreting "commercial" as used in FOIA fee waiver provision).

Several cases in which courts have upheld Postal Service withholding under section 410(c)(2) have concerned proprietary information. See, e.g., Wickwire Gavin v. U.S. Postal Serv., 356 F.3d 588 (4th Cir. 2004) (spreadsheets detailing quantity and pricing information in a contract between USPS and a successful bidder for a mailing supplies contract); Piper & Marbury LLP v. U.S. Postal Serv., 2001 WL 214217, at *4-5 (D.D.C. Mar. 6, 2001) (figures and data in a contract between USPS and DHL); Reid v. U.S.

¹ The court in Piper & Marbury found that exemption 3, in conjunction with section 410(c)(2), was "meant to protect knowledge, figures, or data, and not entire agreements, [as] is supported by even a superficial reading of the exemptions themselves." 2001 WL 214217 at *4.

Postal Serv., No. 05-cv-294-DRH, 2006 WL 1876682, at *7-8 (S.D. Ill. July 5, 2006), modified, 2007 WL 3119803 (S.D. Ill. Oct. 24, 2007) (information in USPS mailing permits for a private marketing firm would reveal the firm's clients, mailing agents, and charges by the USPS); Airline Pilots Ass'n Int'l v. U.S. Postal Serv., Civil Action No. 03-2384, 2004 WL 5050900 (D.D.C. June 24, 2004) (information in delivery agreements between USPS and FedEx including pricing and rates).

To determine the scope of "good business practice," one looks to the commercial world, management techniques, and business law, as well as the standards of practice adhered to by large corporations. Nat'l Western Life Ins. Co. v. United States, 512 F. Supp. 454, 459 (N.D. Tex. 1980). The Postal Service may withhold information of a commercial nature if large businesses would do the same. Wickwire Gavin v. U.S. Postal Serv., 356 F.3d 588 (4th Cir. 2004). In Wickwire Gavin, an unsuccessful bidder for a contract requested a copy of the awarded contract and other documents. A copy of the contract and other documents were provided, but thirteen pages of spreadsheets detailing quantity and pricing information were withheld. The court ruled that the Postal Service properly relied on FOIA Exemption 3 in withholding the spreadsheets and rejected the requester's argument that the Postal Service should have to show that it might suffer some competitive harm if the information became public. Id. at 594-95. Rather, the court said that competitive harm may be one of many considerations embedded within the good business practice exception itself. Id. at 595.

Similar to this case, the court in Reid v. U.S. Postal Service reviewed whether certain information should be withheld or redacted from requested postage statements. The U.S. District Court in the Southern District Court of Illinois had ordered the Postal Service to provide a redacted postage statement, specifically PS Form 3602. Reid, 2007 WL 3119803, at *1. The court ordered the Postal Service to disclose the following information:

- (1) The name, address and telephone number for the holder of the permit;
- (2) "Post Office of Mailing" and "Permit #" subsections;
- (3) The signature, printed name and telephone number subsections of Section 4, but only if it *clearly* indicated the section was completed by the holder of the permit, and not by one of its agent; and
- (4) The "Verifying Employee's Signature" and "Print Verifying Employee's Name" subsections. Id.

However, the court in Reid did hold that some information contained in the postage statement is proprietary to the Postal Service and its customers and thus it would not be a good business practice to release it, and should be protected pursuant to Exemption 3, in conjunction with 39 U.S.C. 410(c)(2).² For instance, the court concluded that the type of mail (i.e. letters, flats, or parcels), mailing date, weight of a single piece, the total

² The court in Reid declined to reach the issue of whether Exemption 4 also applies because the court held that the U.S. Postal Service properly withheld information pursuant to the plaintiff's FOIA request under Exemption 3. 2006 WL 1876682 at *9.

weight, and the number of containers is considered proprietary and may be redacted. *Id.* at *8. Other information on the form was found to be proprietary because it would reveal the permit holder's profits, rates charged to the permit holder's customers, and other information that could put the Postal Service and its customers at a competitive disadvantage. *Id.*

Postage statements have traditionally been treated as sensitive, commercial business information because they reveal mailing patterns of particular customers. Such information is valuable to competitors of both the Postal Service and of the mailer. Although it is true that the information on these requested postage statements pertains to an organization that is not a commercial enterprise or was mailed in connection with an election campaign that is now over, the disclosure of information could potentially impair the relationship between the Postal Service and its customers, who are commercial enterprises, and would accordingly be contrary to good business practice.

In general, it is reasonable to expect that a business, whether it is the submitter or the Postal Service, would suffer competitive harm if the Postal Service were to disclose information submitted by its customers when similar information would not be disclosed by firms in competition with the business. See, e.g., *Westinghouse Elec. Corp. v. Schlesinger*, 392 F. Supp. 1246, 1249 (E.D. Va. 1974), *aff'd*, 542 F.2d 1190 (4th Cir. 1976). For all of the reasons stated above, the requested records were properly protected and redacted pursuant to FOIA Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).

Exemption 4

The financial information was also properly withheld under FOIA Exemption 4. Exemption 4 permits agencies to withhold "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." 5 U.S.C. § 552(b)(4). Financial or commercial information that is *voluntarily* provided to the government is afforded protection as "confidential" information "if it is of a kind that would customarily not be released to the public by the person from whom it was obtained." *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992); see also *McDonnell Douglas Corp. v. NASA*, 180 F.3d 303, 305 (D.C. Cir. 1999). Information that is *required* to be submitted to the government, on the other hand, is ordinarily released unless it poses a "likelihood of substantial harm to the competitive positions of the parties from whom it has been obtained." *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 771 (D.C. Cir. 1974).

The D.C. Circuit has prescribed an objective test in determining whether information is provided voluntarily – "actual legal authority, rather than parties' beliefs or intentions, governs judicial assessments of the character of submissions ... if an agency has no authority to enforce an information request, submissions are not mandatory." *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144, 149 (D.C. Cir. 2001). The court in *Airline Pilots Ass'n, Int'l* found that the USPS did not have legal authority to compel FedEx to submit the redacted information, including pricing and rate information, operational details and specifications, performance requirements and obligations, and negotiated general terms and conditions. 2004 WL 5050900, at *5. Because customers generally are not required to use the Postal Service to distribute their publications or other mailable materials and may employ an alternate delivery firm, the Postal Service

takes the position that postage statements are submitted "on a voluntary basis" for the purpose of Exemption 4.

Information may be considered exempt from disclosure if it is information that is not customarily released to the public. Critical Mass, 975 F.2d at 879; Ctr. for Auto Safety, 244 F.3d at 147-48; Airline Pilots Ass'n, Int'l, 2004 WL 5050900 at *5. Exemption 4 categorically protects proprietary information contained in postage statements from disclosure since the information is not customarily released to the public. See Judicial Watch v. U.S. Dept. of Energy, 310 F.Supp.2d 271, 308 (D.D.C. 2004) (remarking that the submitter "has indicated that [the requested documents] are not customarily disclosed to the public"); Cortez III Serv. Corp. v. NASA, 921 F. Supp. 8, 13 (D.D.C. 1996) (noting that the submitter's "unrefuted sworn affidavits attest to the fact that G & A rate ceilings are the type of information that is not regularly disclosed to the public"). Thus, Exemption 4 protects portions of PS Form 3602 from disclosure.

III. Conclusion

This is the final decision of the Postal Service on your right of access pursuant to the FOIA to these records. You may obtain judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have your principal place of business, the district in which the records are located, or in the District of Columbia.

As an alternative to litigation, you may wish to utilize the services of the Office of Government Information Services (OGIS), National Archives and Records Administration. OGIS was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996;
Facsimile: 301-837-0348;
Toll-free: 1-877-684-6448

For the General Counsel,

Christopher T. Klepac
Chief Counsel
FOIA/Privacy and Government Relations

cc: Mr. Enriquez
Ms. Eyre

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1. The first of the two main parts of the report is a description of the work done during the year.

2. The second part is a summary of the results of the work.

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